

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

No. 6537

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In the Court of Appeals of the District of Columbia

April Term, 1935.

NEAL CROWLEY, AS RECEIVED OF THE
CUYUNA MINNEAPOLIS IRON CO.,
Appellant,

vs.

HAROLD L. ICKES, SECRETARY OF THE
INTERIOR, Appellee.

BRIEF OF APPELLANT.

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Appellant,

vs.

HAROLD L. ICKES, SECRETARY OF THE
INTERIOR, Appellee.

BRIEF OF APPELLANT.

A STATEMENT OF THE FACTS.

This is an action brought in the Supreme Court of the District of Columbia as Equity No. 50,946, by said Appellant against the predecessor in office of said Appellee, under the act of Congress approved March 2, 1919 (40 Stat. 1272), known as the War Minerals Relief Act, as amended by the Act of November 21, 1921, and as further amended by the Act of February 13, 1929, authorizing a review by the Court of errors of law in the final decision of the Secretary of the Interior.

During the Great War the above named Cuy-

una Minneapolis Iron Company, a Minnesota Corporation, sustained great losses under the provisions of Section 5 of said Act of March 2, 1919, as amended, in constructing and developing its mine, known as "Ida Mae Mine," and in producing and preparing to produce manganese under Government stimulation, at first by Government request, and later by the Government's peremptory demand having the effect of an impressment, by reason whereof said Company became insolvent, and a sequestration action was commenced in the District Court of Crow Wing County, Minnesota, by one Charles F. Horsford, Jr., a creditor of said corporation, in behalf of all creditors of the corporation, and on December 1, 1921, said District Court made an order in said action appointing Mal Clark receiver for said corporation (R. pp. 3, 32).

On the 12th day of December, 1921, the claim of said Cuyuna Minneapolis Iron Company for its said losses was filed in its name with the Secretary of the Interior (R. pp. 11, 32), and on the 20th day of October, 1922, the Secretary of the Interior filed his final decision making an award upon the allowed items of said claim in the sum of \$183,747.30 (R. pp. 36, 30), and rejecting items of said claim in the sum of \$189,319.28 (R. p. 13).

Mal Clark died in the month of January, 1929, and on the 5th day of September, 1929 the District Court of Crow Wing County duly made an order in said sequestration action appointing said Neal Crowley as receiver for said corpora-

tion in the place and stead of said Mal Clark, deceased (R. pp. 4, 54); and on the 11th day of February, 1929, said Neal Crowley as Receiver of said corporation commenced this action.

This action was tried in June, 1932, before the Honorable Joseph W. Cox, on Petitioner's petition for review (R. p. 2), the answer, and admissions therein of the Secretary (R. p. 32), and certain records of said claim No. 1259, which were presented to the Court under a stipulation providing for the use, for the purposes of said trial, of typewritten copies of said records of said claim in the office of the Secretary of the Interior, in lieu of the original records (R. pp. 35, 50).

At the trial Respondent moved orally to dismiss the action on the ground that the right to collect and enforce payment of said claim did not pass to the receiver and that the receiver did not have the right to maintain the action, and the court denied the motion (R. p. 36).

On or about December 14, 1932, Respondent filed motion to serve an amended answer to raise the above objection and other defenses, and the same was argued orally on or about the 23rd of December, 1932; and denied in the memorandum opinion of the Court filed Feb. 21st, 1933 (R. p. 36).

MEMORANDUM OPINION FILED FEBRU-
ARY 21, 1933.

In its said opinion the Court determined that the following items of petitioner's claim, which were rejected in said final decision, of the Secretary of the Interior, were proper items for consideration and that the Secretary erred in rejecting them to-wit:

1. Prestimulation expenditures in the construction of the Ida Mae Mine—Schedule A Par. XIX of Petition (R. p. 13), and Memorandum Opinion (R. pp 38-40) \$24,344.54

2. Expenditures for leases—Schedule B Par. XX of Petition (R. p. 14), and Memorandum Opinion (R. pp. 40-41) .. \$54,064.36

3. Expenditures for Minimum Royalties, \$23,883.75, Taxes, \$10,130.37 Attorney's fees, \$5,000.00, Interest to November 1918, \$5,804.62, these expenditures being tabulated in Schedule D, Par. XXVIII of Petition (R. p. 19) and set out in Memorandum Opinion (R. p. 41) \$44,816.74

In and by said Memorandum Opinion (R. p. 42) the Court determined that the Secretary, in disallowing the following items of Petitioner's claim, properly adjudicated the same to-wit:

1. Stock sales commission \$22,425 84 and other financing and promotion expenses amounting to \$13,252.52—Schedule C, Par. XXVI of Petition (R. p. 18), and Memorandum Opinion (R. p. 42) \$35,678.76

2. Claim for excess salvage deduction, Par. XXXV of Petition (R. p. 23) and Memorandum Opinion (R. p. 43) \$29,872.88

The Company was organized on March 27, 1916, with an authorized capital of one million shares of the par value of One (\$1.00) Dollar each, 450,003 of which shares were issued for options obtained through said Franklin W. Merritt President of the Company, upon the Company's mineral land, and 549,997 of which were held by the Company as treasury stock for sale in financing the corporation (R. pp. 17, 66).

THE COMPANY'S STIMULATION OF APRIL 17, 1918, AND LATER IMPRESSMENT BY THE GOVERNMENT'S PEREMPTORY DEMAND ENFORCED BY A THREAT

Late in the year 1916 and prior to government stimulation, the expenditures in Schedule A were incurred by the Company in pursuance of its purpose to continue surface mining only long enough to derive the means for striping the property and operating it as an open pit mine (R. p. 4). This stimulation by the Government, however, changed the mining operation to a government enterprise (R. pp. 14, 40), and after April 17, 1917, in compliance with the stimulation of that date, the Company entered upon the work of developing the mine on a larger scale than was intended, in order to meet the requirement of the Government, and so continued to act in compliance with said stimulation by published appeal until the peremptory demand of March 22, 1918 (R. p. 8).

The fact of the Government's said peremptory

demand enforced by a threat and having the effect of an impressment, is set out in paragraphs XII and XIII of Petition (R. pp. 7-10), and admitted in paragraph XII and XIII of Respondent's answer (R. p. 32), from which it appears that Franklin W. Merritt, President of the Company, upon the request or demand of Pope Yeatman, of the Raw Materials Division War Industries Board, attended a meeting of said Board, with members of the War Shipping Board, on March 22, 1918, at room 716, National Defense Building, 18th and D Streets, Washington D. C. (R. p. 9), and that a statement of what occurred at said meeting is set forth in Memo 3 of Question 8 of the Questionnaire, one of the records of said claim (R. p. 8), and is as follows:

"During the course of the meeting said Franklin W. Merritt was ordered to do everything within the power of the Company to produce every ton of manganese ore possible, regardless of the costs or of consequences, and was informed that were not every effort exerted and results obtained the Government would take over and operate the property itself."

The rejected items of loss sought to be recovered by this action for review, and which the Court below in its Memorandum Opinion of February, 1933, adjudged to be recoverable losses under the Act (R. pp. 39-41), were incurred in said enterprise under said Government stimulation of April 17, 1917, and the said peremptory demand by the authorized agents of the Government, of March 22, 1918 having the effect of an

impressment, (Memorandum Opinion, R. pp. 10, 39); and the new or government enterprise brought into being by such stimulation and impressment was financed by the money paid to the Company by its stockholders for said capital stock which was purchased and paid for by them for that purpose; and by sale of the Company's bonds (R. p. 66).

Under the laws of Minnesota the stockholders become individually liable to creditors for the debts of the corporation; and in addition to financing the enterprise by the purchase and payment for their stock, the stockholders were required to pay and paid, in discharge of their said individual liability, a large amount of the indebtedness incurred in said war or government enterprise (R. p. 25).

The stock sale exceeded \$325,000.00 and a large part of the stock sales were to stockholders residing in or near Pittsburgh, Pa., where the company maintained an office. Expenditures in carrying on the enterprise were contingent upon the sale of stock (R. p. 66). In 1918 the Company arranged for the issue of bonds. The expenditures for 1917 amounted to \$146,546.33, and 1918 to \$297,497. (Auditor's Report R. pp. 66, 67); (Memorandum Opinion R. p. 42); (Petition R. p. 17). In April 1919, William H. Fitzer, one of the Pennsylvania stockholders, succeeded Franklin W. Merritt as President of the Company (R. p. 67).

Petitioner's said claim No. 1259, was verified and filed by William H. Fitzer, President of the

Company, and in its name. The Auditor's examination was made at Brainerd, Minn., at the office of Mal Clark the former Receiver. The Auditor received additional information at Minneapolis from said Franklin W. Merritt, President and Neal Crowley, Secretary and Treasurer, of said Company prior to April, 1919 (R. p. 66).

The award of \$183,747.30 for the adjusted items of Petitioner's claim was paid upon an acceptance signed by Mal Clark as receiver of the Cuyuna Minneapolis Iron Company, whereby said award was paid to and accounted for by said receiver in said Sequestration action (R. pp. 37, 53). Respondent answered the Petition herein on the merits, and in its answer admitted the receiver's right to maintain this action by repeated allegations therein designating, naming and specifying said war minerals claim No. 1259 as "Petitioner's War Minerals claim" (R. pp. 32, 33, 34). And thereafter, on January 5, 1932, Respondent by his attorney entered into a written stipulation with Petitioner's attorney, providing that typewritten copies of any of the records of said claim might be presented to and considered by the Court at the trial of said action (R. p. 35).

On or about the 11th day of February, 1935, Respondent, the Appellee, filed his petition and motion (R. p. 44) for a rehearing of his motion to dismiss the petition for review herein, and to amend his answer as a basis for such motion, orally made at the hearing of said action, and thereafter repeated, in a formal motion, on the

ground that the denial of such motion by the court in its said Memorandum Opinion dated February 21, 1933, does not comport with the holding of this court, in the subsequent decision in *Ickes v. Cuyuna Mining and Investment Company, Assignee of the Northern Minnesota Ore Company*, 63 App. D. C. 91, 69 Fed. (2nd) 662, that said Investment Company acquired no interest in the right of review of the Minnesota Ore Company by a sale to it of the assets of the Minnesota Company made by its receiver in October, 1928, before the Act of 1929 had been passed.

On the 8th day of March, 1935, petitioner filed his answer and objections to said Petition and motion for a rehearing, on the ground that prior to the Act of 1929, the Northern Minnesota Ore Company had no right of review, that the sale of the assets of the Minnesota Company in October, 1928, could not pass title to a right which did not then exist, and that the decision in *Ickes v. Cuyuna Mining and Investment Company* is not applicable to the instant action (R. p. 45); and on the further ground that the Secretary by paying the award for the adjusted items of Petitioner's claim upon an acceptance signed by the receiver (R. pp. 37, 53), whereby said award was paid to and accounted for by said receiver in said sequestration action, and by other acts, waived the right to claim, and became estopped to assert, that the receiver as an officer of the Court was not vested with the right to collect and enforce said claim (R. pp. 49, 53).

On the 18th of April, 1935, the Court made and

filed its Memorandum granting the motion of Respondent, for rehearing, and dismissing Appellant's said petition for review, on the ground that the decision in *Ickes v. Cuyuna Mining and Investment Company* is not based upon the ground therein stated, that, at the time of the sale by the receiver of the Northern Minnesota Company of its assets, "The Act of 1929 had not been passed, hence the Minnesota Company had no right of action against the United States which could pass by sale;" but upon the ground, as stated in the Memorandum of the trial Court. "that claims under the War Minerals Relief Act may not be transferred by operation of law"; and thereupon, on the 4th day of June, 1935, the Court made and filed its Decree, or Final Order, dismissing said Petition for review, and vacating said Memorandum Opinion, dated February 21, 1933; and from said decree this appeal is taken.

STATEMENT OF THE QUESTIONS INVOLVED.

1. Whether the War Minerals Relief claims granted by the Act of March 2, 1919, as amended, are gratuities based upon equitable and moral considerations importing a moral obligation on the part of the Government to pay them, as claimed by Appellant, or are mere gifts, as claimed by appellee.

2. Whether Petitioner's claim had and has a pecuniary value making it property capable of being transferred.

3. Whether the Secretary by paying the partial award upon an acceptance signed by the receiver, whereby it was paid to and accounted for by the receiver as an asset of the corporation, and by stipulating for the trial of said action on the merits, and by admitting in his answer that the claim passed to the receiver by their repeatedly designating said claim as Petitioner's claim, has not waived the defense, and became estoppel to assert that the claim has no pecuniary value and is incapable of being transferred, or that the receiver as an officer of the Court and representative of the corporation is not vested with the right to collect and enforce said claim.

4. Admitting for argument only that Petitioner's War Minerals Relief claim was incapable of being transferred and that the title thereto remained in the corporation, Appellant claims that by the order of this appointment the receiver as an officer of the Court was vested with authority to collect and enforce petitioner's claim in the right of the corporation as the holder of the legal title thereto.

5. Whether the corporation by whose officers the claim was filed with the Secretary of the Interior and the receiver by whom, as an officer of the Court and representative of the corporation, this action was commenced, are not essentially the same claimant within the meaning of the act.

6. Whether, because prior to the Act of 1929 Petitioner's claim could not be enforced in any

court, it follows that items of loss erroneously rejected by the final decision of the Secretary can not be enforced under that Act.

7. Whether the Secretary can justly urge the insolvency caused by the losses suffered by a corporate claimant as the ground for refusing to pay those losses.

ARGUMENT.

I

UPON THE INSOLVENCY OF A CORPORATE CLAIMANT THE RIGHT TO COLLECT AND ENFORCE ITS WAR MINERALS RELIEF CLAIM ALTHOUGH "STIMULATED" SOLELY BY PUBLISHED REQUEST, PASSED TO THE RECEIVER AS AN OFFICER OF THE COURT AND REPRESENTATIVE OF THE CORPORATION, AND ITS STOCKHOLDERS.

1. *The relief granted by Sec. 5 of the Act recognizes and in most, though not all claims, is based solely upon the moral obligation of the Government to pay net losses.*

William v. Heard, 140 U. S. 529;

Allen v. Smith, 173 U. S. 389, 399, 402;

Work v. Rives, 267 U. S. 175, 181;

United States v. Realty Company, 163 U. S. 427, 439, 440;

Parish v. Cortelvou, 30 App. D. C. 45, 54;

Parish v. McVeagh, 214 U. S. 124, 134;

Price v. Forrest, 173 U. S. 410, 422.

(a) The decision in *Work v. Rives*, 267 U. S. 175 holds that the equitable and moral considerations upon which the relief in Sec.

5 is based import a moral obligation of the Government to pay net losses.

On page 181 of the decision of *Work v. Rives*, the Court, after reviewing the provision of the Act of 1919, says:

"The above summary of Section 5 shows that Congress was seeking to save the beneficiaries from losses which it would have been under no legal obligation to make good if a private person. It was a gratuity *based on equitable and moral consideration*. *United States v. Realty Company*, 163 U. S. 427, 439; *Allen v. Smith*, 173 U. S. 389, 402. Congress did not wish to create a *legal* claim. It hedged the granting of the *equitable gratuity* with limitations to prevent the use of the statute for the recovery of doubtful or fraudulent or merely speculative losses." (Italics supplied.)

The statement in the decision in *Work v. Rives* that Congress did not wish to create a legal claim, implies the converse viz, that Congress did intend to create claims based upon an equitable and moral obligation; and the statement, that Congress was seeking to save the beneficiaries from losses which it would have been under no legal obligation to make good, means that, by limiting the basis of claims to the government's moral obligation, honest and deserving claimants would have sufficient ground for the enforcement of their claims, while claims without any merit or basis of moral consideration could not be enforced on strictly legal ground. The statement clearly asserts the Government's moral ob-

ligation to pay the losses of its intended beneficiaries.

That the words "equitable and moral considerations," as used in the decision in the *Rives* case import a moral obligation, is also shown by the fact that they are immediately followed in the decision by the citation of page 439 of the decision in *United States v. Realty Co.*, 163 U. S. 427, and page 402 of the decision in *Allen v. Smith*, 173 U. S. 389.

The language of page 439 of the decision in *United States v. Realty Company*, 163 U. S. (an action based on the Sugar bounty act of Mar. 2, 1895), which was thus by reference or citation, made a part of the decision in *Work v. Rives*, is in part as follows:

"Payments to individuals, not of right or of a merely legal claim, but payments in the nature of a gratuity, yet having some feature of a moral obligation to support them, have been made by government by virtue of Acts of Congress appropriating public money ever since its foundation."

The language of page 402 of the decision in *Allen v. Smith*, 173 U. S. 389, (also one of the sugar bounty cases), which was thus by reference or citation made a part of the decision in *Work v. Rives*, is as follows:

"Such act was passed, as was held in *United States v. Realty Co.*, 163 U. S. 427, in recognition of a moral obligation to those who put in their crops the previous year upon the faith of the bounty law then in existence." (Italics supplied.)

It therefore appears that the Court in *Work v. Rives*, by citing page 439 of the decision in *Realty Company* case, and page 402 of the decision in *Allen v. Smith*, used the words, "based upon equitable and moral considerations," as importing a moral obligation on the part of the Government to pay the claims.

The Court in *Rives v. Work*, 267 U. S. 175, uses gratuity and bounty as having the same meaning, and they are in fact synonymous. In *Webster's International Dictionary* the word gratuity is defined as "something voluntarily given in return for a favor or service, hence a bounty"; and the word bounty is defined as "a reward or premium offered to encourage industry."

(b) That the grant by Congress of the War Minerals Relief claims, and especially the claims of Petitioner, are based upon a moral, if not a legal, obligation on the part of the Government, is shown by the character of the stimulation or demand.

The authorities furnish no example of bounties or gratuities granted by the Government upon stronger equitable considerations, or which impose upon the Government greater moral obligations for their payment, than the War Minerals Relief claims, which as their name implies, are based upon a stimulation, appeal and demand by the Government for objects of the greatest public interest to be obtained. And now when it is claimed as a defense to petitioner's claim that the War Minerals Relief claims are not based upon any equitable considerations or moral obligations,

but were granted as mere gifts, it may not be amiss to recur to the War time needs which made it necessary for the Government to obtain from the miners of our country the production of manganese ore for the use of the Government in making cannon, tanks, small arms and other munitions of war.

The appeals made by the authorized agents of the Government upon the miners were many; and that even those by request and solicitation were urgent is shown by the published appeal by President Wilson set forth in the affidavit of Franklin W. Merritt, President of the Company and filed as the record of said claim on which the Secretary fixed the date of the Company's stimulation as April 16, 1917. It is stated in said affidavit and alleged in Paragraph IX of the Petition (R. p. 5) and admitted in Paragraph IX of the answer (R. p. 32), that Franklin W. Merritt read a number of published appeals, among which was the appeal of President Wilson, printed in the Pittsburg papers, as follows:

"To the miner let me say he stands where the farmer does; the work of the world waits on him. If he slackens or fails, armies and statesmen are helpless. He also is enlisted in the great service army. (Signed) Woodrow Wilson."

(c) The stimulation by published appeal was made under circumstances which show that claimants in complying therewith rightly relied upon the moral obligation thereby assumed by the Government to reimburse claimants for losses which they might suffer.

Manganese (and each of the other three metals mentioned in Sec. 5) can be produced only at great expense required for sinking shafts, mining equipment and under ground operations. At the commencement of the war comparatively little of the manganese used for peace time purposes was mined in this country. In 1917, at least five sixths 5-6 of the high grade manganese used in this country was imported, and the importations were largely from Brazil (R. p. 6). The Government's war time need of greater activity and new mines for the production of domestic manganese was also increased by the interference with and menace to the importation of manganese by German Privateers.

Compliance with Government stimulation, therefore, and the demand upon the miners for the production of manganese, necessarily required the investment of large amounts for the construction of mines, mining equipment and mining operations; and both the miners and the Government knew that the expenditures in preparation for producing manganese in compliance with Government stimulation might, and probably would, become useless at the close of the war, which might end even before the miners mining operations reached the point of production; and they also knew that in such event the miner would suffer, losses. Hence the deep moral obligation incurred by the Government for losses based upon the request and appeal, not to speak of the additional legal obligation arising from

the Government's peremptory demand in the instant case.

The Company's compliance with the stimulation by published appeal required and involved the entire change of the Company's mining operation into a Government operation.

That the Cuyuna Minneapolis Iron Company relied upon the Government's obligation to pay losses is also shown by the fact that prior to the Government's appeal it was the Company's purpose to limit the development of its mine and its mining operation to obtaining sufficient therefrom to pay for stripping the property for open pit mining, "in order that the production might be increased and the costs of mining reduced." Petition VII (R. pp. 4, 5). After and in compliance with the stimulation by published appeal, the plan of mining, and the mining operation, were changed to an under ground developement upon the much larger scale required by the Government to meet its immediate needs for carrying on the War. This change was dictated by the authorized agents of the Government and its effect was to change the private enterprise of the corporation to a Government operation. (Memorandum opinion R. pp. 39, 40 and Petition, R. p. 10).

Under these circumstances it appears that the stipulation by published appeal, which continued without change until the peremptory demand of March 22nd, 1918, was made by the Government and complied with by the Company with the

mutual understanding by and between the parties that the Government thereby assumed the moral obligation to pay the losses which the company might suffer, and the company, in complying with such stimulation, relied upon the moral obligation so assumed.

2. *The Government's need in emergencies for credit based upon its moral obligation, and the scrupulous care with which it has hitherto maintained that credit by honoring its moral obligations, has given to claims founded thereon, the character of debts, and established their unquestioned pecuniary value as property.*

United States v. Realty Company, 163 U. S. 427, 440, 441;

Work v. Rives, 267 U. S. 175, 181;

Allen v. Smith, 173 U. S. 389, 395.

Williams v. Heard, 140 U. S. 529, 539;

Parish v. McVeagh, 214 U. S. 124, 134, affirming *Parish v. Cortelyou*, 30 App. D. C. 45, 54;

Price v. Forrest, 173 U. S. 410, 425, 426.

Section 5 of the Act of March 2, 1919 (40 Stat. 1272), provides in part as follows:

"That the Secretary of the Interior be, and he hereby is, authorized to adjust, liquidate, and pay such net losses as have been suffered by any person, firm or *corporation*, by reason of producing or preparing to produce either manganese, chrome, pyrites, or tungsten in compliance with the request or demand of the department of the Interior, the War Industries Board, the War Trade Board, the Shipping Board or the Emergency Fleet Corporation, to supply, etc. * * *

“The said Secretary shall make such adjustments and payments in each case as he shall determine to be just and equitable; * * *.” (*Italics supplied.*)

In this action for review the Court determined that in its final decision the Secretary erred in rejecting items of Petitioner's claim to the amount of over One Hundred and Twenty Thousand (\$120,000) Dollars, and directed the Secretary to adjust and pay them (R. pp. 39-41).

The War Minerals Relief Claims spring from principles of Justice and equity (Sec. 5 Act of March 2, 1919, as amended); and, as we have pointed out, are based upon the moral if not legal obligation of the Government to pay them. *Work v. Rives*, 267 U. S. 175, 181; *United States v. Realty Company*, 163 U. S. 427, 439, 440. Congress, therefore, acted within its powers in recognizing claims based solely upon equitable and moral obligations as debts by appropriating money for their payment. Act of March 2, 1919 (40 Stat. 172).

That the time honored practice and settled policy of the Government to pay claims against it based upon its moral obligation to pay them, although not enforceable in any tribunal, has given and gives such claims pecuniary value as property, is established by an unbroken line of authorities, which, we think, should not be overruled by a decision in this action that the insolvency caused by the losses suffered by a corporate claimant may be made the ground or excuse for refusing payment of such losses.

It was the contention of Counsel for the Government in the Court below that the War Minerals Relief claims are not based upon any moral or legal obligation, and have no pecuniary value as property, and that they are, therefore, incapable of being transferred. Appellant claims that Petitioner's claim has pecuniary value as a debt and is transferable (a) on the ground of the stimulation by request and appeal, giving rise to a moral obligation, and (b) on the ground of the Government's peremptory demand giving rise to a legal obligation. Appellant also claims that upon the order appointing the receiver, the right to enforce Petitioner's claim passed to the receiver, not as assignee or transferee of the title thereto, but as an officer of the Court, and the delegated representative of the corporation, and its creditors and stockholders, to collect the claim and pay it, under the order of the Court, to creditors and stockholders of the Company, the ultimate sufferers of the losses.

(a) *Claims although based solely upon equitable and moral obligations constitute a monetary debt.*

The case of *United States v. Realty Company*, 163, U. S. 427, one of the cases stating and establishing the principle upon which is based the Government's policy and practice of paying, as debts, claims based upon its equitable and moral obligation only, was an action brought by said Realty Company to recover a claim for sugar bounty which arose as follows: On October 1st,

1890, Congress passed the so-called Tariff Act (26 Stat. 567-583), which provided, among other things, for the payment under the regulation of the Commisioner of Internal Revenue, with the approval of the Secretary of the Treasury, of a bounty of a specific amount per pound to the manufacturers and producers of sugar. The act of October 1st, 1890, was not only repealed by an act passed August 28, 1894 (28 Stat. 509), but it was adjudged unconstitutional and void. By still another act, approved March 2, 1895, (28 Stat. 910, 933), Congress provided that a bounty of 8-10 of a cent a pound shall be paid by the Secretary of the Treasury to those manufacturers and producers of sugar who have complied with the bounty Act of October 1, 1890.

Since the Act of October 1, 1890 (26 Stat. 567) was adjudged unconstitutional and void, claims arising upon the Act of March 2nd 1895, were not legal claims, but were mere gratuities or bonuses based upon moral and equitable obligations only, as is Petitioner's War Minerals Relief Claim, admitting for argument only that Petitioner's claim is not based also upon a legal obligation by virtue of the Government's peremptory demand of March 2, 1918.

Claims for the gratuity or bounty under the Act of March 2, 1895, in their nature were not enforcable in a Judicial Court, and might have remained incapable of being enforced in a Judicial Court, except for the remedial Act of March 3, 1887 (24 Stat. 505, Chapter 359), known as the *Tucker Act*, which conferred Jurisdiction

upon the Court of Claims to hear and determine, among other matters, the following claims:

“All claims founded upon the constitution of the United States or any law of Congress, except pensions, or of any regulation of an executive department * * *.”

In said action by the *United States v. Realty Company*, 163 U. S. 427, 440, the Realty Company brought its action to recover its said claim for bounty or gratuity granted by the Act of March 2, 1895, under said Act of March 3, 1887. The Government claimed as a defense, that in as much as the Act of October 1, 1890 was invalid the United States was under no moral or equitable obligation to pay any bounty, and therefore that the claim of a bounty under the Act of March 2, 1895 did not constitute an indebtedness of the United States. But the Court held not only that the grant of the bounty in that case was a debt of the Government to the claimant, but also that payment of such debts have been made to individuals by the government ever since its foundation. On pages 440-441, the Court says:

“There was enough in the case as presented to Congress upon which to base the assertion that there was a moral and honorable claim upon the public treasury which that body has a constitutional right to recognize and pay. Under the provision of the constitution (Art. 1, Sec. 8) Congress has power to levy and collect taxes * * * ‘to pay debts’ of the United States. Having power to raise money for that purpose, it of course follows that it has power when the money is raised

to appropriate it to the named object of this constitutional provision."

"The nation, speaking broadly, owes a "debt" to an individual when his claim grows out of general principles of right and justice; when, in other words, it is based upon considerations of a moral or merely honorary nature, such as are binding on the conscience or the honor of an individual, although the debt could obtain no recognition in a Court of law. The power of Congress extends at least as far as the recognition and payment of claims against the government which are thus founded. To no other branch of the government than Congress could any application be successfully made on the part of the owners of such claims or debts for the payment thereof. There recognition depends solely upon Congress, and whether it will recognize claims thus founded must be left to the discretion of that body. *Payments to individuals, not of right or of a merely legal claim, but payments in the nature of a gratuity, yet having some feature of moral obligation to support them, have been made by the government by virtue of acts of Congress, appropriating the public money, ever since its foundation.* (Italics supplied.)

(b) *Claims although based solely upon equitable and moral obligations have pecuniary value and constitute property.*

Williams v. Heard, 140 U. S. 529, 539, in which it was earlier held that claims against the government based upon its equitable and moral obligation, although not legal claims, nor capable of being enforced in a judicial court, have pecu-

niary value as property, was an action for money had and received brought in the Supreme Judicial Court of Suffolk County, State of Massachusetts, by William Heard, Augustine Heard and Albert F. Heard, copartners, to recover the amount of an award made by the Court of Commissioners of the Alabama claims under the Act of Congress approved June 5, 1882, 22 Stat. 98 Chap. 195, on account of "enhanced insurance premiums," paid by plaintiffs during the war of the rebellion.

The Court of arbitration of Alabama claims at Geneva in its final decision, September 18, 1872 made an award of \$15,000,000.00; but expressly rejected the class of claims for "enhanced premiums of insurance" on the ground that they were not claims upon which the claimants were entitled to recover damages upon any principle of international law: and the \$15,000,000.00 awarded did not include the claim of the Heards, the plaintiffs in said action. It was held, however, in *State v. Weld*, 127 U. S. 51, that the award was made to the United States as a nation, and that the fund was a national fund to be used as Congress saw fit. The Heards, the claimants, became bankrupt in 1875, and the assignments in bankrupt were made in 1877.

It was claimed by the Plaintiffs, the Heards, that the claim did not pass to their Assignee in Bankruptcy, on the ground (a) that a claim based upon equitable and moral obligations only and incapable of being enforced in a Judicial Court, has no pecuniary value as property, and

(b) that the Act of Congress under which the award was made was not passed until June 5, 1882, five years after the assignments in bankruptcy. The action resulted in a Judgment in favor of the claimants, the Heards, (146 Mass. 545) from which an appeal was taken, and in its reversal decision (140 U. S. 529) the Supreme Court, at pages 538, 539, 540, says:

“But no individual claimant had, as a matter of strict legal or equitable right any liens upon the fund awarded, nor was Congress under any legal or equitable obligation to pay any claim out of the proceeds of the fund * * *.

“There was undoubtedly a moral obligation on the part of the United States to bestow the fund received upon individuals who had suffered losses at the hands of the Confederate Cruisers, and in this sense all of the claims of whatsoever nature were possessed of greater or less pecuniary value. There was at least a possibility of their payment by Congress, an expectancy of interest in the fund, that is, a possibility coupled with an interest.”

ALLEN V. SMITH, 173 U. S. 389, 395, 402.

Allen v. Smith, 173 U. S. 389, 402 was an action to determine the rights of the representatives and heirs of a deceased planter of sugar cane to the bounty under the Act of March 2, 1895 (28 Stat. 910, 939).

Richard H. Allen planted a crop of cane upon his plantation, and thereafter, on September 14, 1894, died testate, while the crop planted by him was growing. Bettie Allen, the widow, Ogden

Smith and W. F. Collins were executors. The Court in holding that the claim for the bounty, which arose prior to the Act of March 2, 1895, survived said Richard B. Allen, the planter of the crop, and constituted property, on pages 399 and 400, says:

"It is quite evident that Allen himself was not the producer. He had planted the crop of cane upon his own plantation. He had given notice and a bond * * *; but he had done nothing towards the production of sugar at the time of his death beyond raising the cane which certainly would not entitle him to be considered a producer of sugar." * * *

"Neither can Mrs. Allen, nor the heirs of her husband be said to be the direct producers of the sugar * * *. One half of the plantation passed under the will to Mistress Bettie, and the other half to the heirs of her husband. * * *

"The inchoat right to the bounty obtained by Allen before his death was a personal asset, which undoubtedly passed to the executors * * *."

On page 402 it is further said:

"Such act was passed, as was held in *United v. Realty Co.*, 163 U. S. 427, in recognition of a moral obligation to those who had put in their crop the previous year upon the faith of the bounty law then in existence."

And in answer to the claim that the bounty was a gift the Court at page 402, further says:

"Bounties granted by a government are never pure donations, but are allowed either in consideration of services rendered or to be rendered, objects of public interest to be

obtained, production or manufacture to be stimulated or moral obligations to be recognized."

In *Parish v. McVeagh*, 214 U. S. 124, 134 affirming *Parish v. Cortelyou*, 30 App. D. C. 45, 54, the Supreme Court held that a claim against the Government based upon a moral obligation only, upon the death of the claimant passed to his personal representatives.

In *Parish v. Cortelyou*, 30 App. D. C. 45, 54 the facts were:

On March 5, 1863, J. W. Parish and Co. (to whose right Joseph W. Parish succeeded), entered into a contract with the United States to deliver all ice required for war purposes during the remainder of that year. The contract was thus limited to such amount of ice as the Government might require. On April 2, 1863 when 12,768 tons of ice had been delivered; an order was made suspending the order for ice. In addition to the 12,768 tons delivered, Parish incurred expense in preparing to deliver ice which the Government did not require or contract for, and, for the purpose of recovery for said additional ice, said Parish brought an action in the Court of claims which resulted in a judgment against him. The courts having decided that Parish had no legal right of recovery for producing or preparing to produce any ice other than the 12,768 tons delivered prior to the order of April 2, 1863, terminating its contract for ice, Congress on February 17, 1903, passed an act for the payment to said Joseph W. Parish for his loss of expenditures in producing the additional ice.

Said Joseph W. Parish having died, an action, or proceedings in mandamus, was brought by the Executor of the Will of Joseph W. Parish against Cortelyou, Secretary of the Treasury, to compel him to pay the relief provided by the Act of February 17, 1903; and from a judgment sustaining the Secretary in denying the relief an appeal was taken.

Here as in the War Minerals Relief cases the claim was based not upon any legal right,—for the court of claims had decided that Parish had no claim based on any legal rights,—but upon equitable and moral considerations. *Work v. Rives*, 267 U. S. 175, 181; *Williams v. Heard*, 529, 539, *United States v. Realty Co.*, 163 U. S. 427.

The Secretary interposed two defenses, (1) that the Act of 1903 was solely for the relief of said Joseph W. Parish, and that the right for relief did not pass by succession to his executor; and (2) that the Act gave to the Secretary discretion in determining the claim. In deciding the question raised by the first defense the Court in *Parish v. Cortelyou*, 30 App. D. C. 45, 54, says:

“The contention is that the statute was passed solely for the relief of Joseph W. Parish and makes no provision for the succession of his personal representatives. This is true, but the Act recognizes the right of Parish to the payment of money and makes appropriation therefor * * *. As there is no apparent reason why the right should be limited to Joseph W. Parish solely, and there is nothing in the Act expressly

negating its succession in case of death, we are of the opinion that the right to enforce the demand, if it can be enforced at all, survived, and passed to the personal representatives."

The Court of Appeals in the above decision held that the Act of February 17, 1903, imposed upon the Secretary of the Treasury a duty involving discretion and that mandamus did not lie. But on appeal the Supreme Court in *Parish v. McVeagh*, 214 U. S. 124, 134, affirmed the part of the decision above quoted, and reversed the part holding that the Act imposed upon the Secretary a duty involving discretion, and decided that mandamus did lie, and in so holding the Court at page 134 says:

"It is manifest therefore that the Act was passed under the conviction that Parish had rights which had not been satisfied, and we are brought to the consideration of the Act as a means of satisfying them."

The words in the decision, "that Parish had rights" necessarily means rights based upon a moral obligation, for the Court of claims had decided that he had no legal rights; and they also mean that such rights were a monetary debt which required payment and constituted property. *United States v. Realty Company*, 163 U. S., 427, 440, 441. *Williams v. Heard*, 140 U. S., 529, 539; *Allen v. Smith*, 173 U. S., 389, 395; *Price v. Forrest*, 173 U. S., 410, 425, 426.

PRICE V. FORREST, 173 U. S. 410

One of the authorities which establishes the principle that claims against the government based solely upon a moral obligation, and having no semblance of any legal right, has pecuniary value as property and is capable of being transferred by operation of law, is *Price v. Forrest*, 173 U. S., 410, 428, 19 Sup. Ct. Rep. 434, in which the facts were:

Rodman M. Price, who had held the office of purser and fiscal agent for the United States Navy in California from some date in 1848, to December, 1849, after retiring from the office on January 14, 1850, advanced to A. M. Van Nostrand, his successor, out of his private funds, \$75,000 for the use of the government. His successor never accounted to the government for the money and never returned it. Price insisted that the United States should reimburse him for the amount so advanced to Van Nostrand, but the United States by its officers denied that it was liable for the amount; and on March 12th, 1854, Attorney General Cushing gave an opinion in which he held that the Government could not be charged with the private funds paid to Van Nostrand, although the appointment of Van Nostrand to said office of purser and fiscal agent was lawful, and Price believed that his advance of the money was for the accommodation of the government. (6 Opin. Atty. Gen. 357).

On February 23, 1891, Congress passed an Act, (26 Stat. 1371, C 279) entitled "An Act for the

relief of Rodman M. Price", by which the Secretary of the Treasury was "authorized and directed to adjust upon principles of equity and Justice the account of Rodman M. Price, late purser * * * and pay to said Rodman M. Price, or his heirs, * * * any sum that may be found due him upon such adjustment." In August, 1892, the Secretary of the Treasury adjusted the accounts of Price, crediting him with the amount of his claim.

In 1857 Samuel Forrest recovered in the Supreme Court of New Jersey a judgment against Rodman M. Price for the sum of \$17,000.00 and costs, and execution therein was returned unsatisfied. Forrest died intestate in 1860 and in 1874 his wife was appointed administratrix of his estate, and in the same year procured a revivor of the judgment. The bill for revivor of the judgment alleged that Price had an interest in lands and equitable choses in action and other property, and prayed for a discovery. Price, his wife and son, the defendants in said bill, answered, denying the allegations of the bill.

In 1892, Mrs. Forrest, Administratrix, having learned of the adjustment made of Price's claim by the Secretary of Treasury, in August of that year, filed a petition in the above action, or bill, stating that the amount with which Price's account was credited was about to be paid in drafts or negotiable security, and praying for the appointment of a receiver therefor, and an order directing Price immediately upon receiving the drafts to endorse them to the receiver.

Drafts for a part of the amount were received by Price and retained, and he was adjudged in contempt of Court (*Forrest, Adms. v. Price*, 52 N. J., Eq. 16, 31).

Thereafter a bill was filed in the chancery court of the State of New Jersey, July 5, 1894, by the Administratrix of Samuel Forrest and Charles Borchering, receiver, as plaintiffs v. the heirs and children of Rodman M. Price and others, as defendants, asking the Court for judgment directing the payment of the unpaid portion of said claim and account, as adjusted, to said receiver, to be paid ultimately to the parties determined by the court to be entitled thereto, and an order restraining the defendants from attempting to collect the same. A judgment in this last mentioned bill was rendered in favor of the plaintiffs by the Court of Appeals of New Jersey (54 N. J. Eq. 669, 684), and from that judgment the defendants appealed.

The heirs and children of Price, plaintiffs in error, based their claim to the fund on two grounds, (a) that the New Jersey Court had no jurisdiction to sequester the fund, and (b) that the claim of Price against the United States was in the nature of a personal donation or gift to Price, that it was not transferable and that the interest of the heirs of Price in the claim was by donation or gift and not by operation of law.

In deciding the case the Supreme Court (140 U. S. 410) at page 428, says:

“We concur with the State Court in the view that the Act of 1891 was not intended to confer a mere gratuity upon Price, but

was in recognition of a moral and equitable, if not a legal, obligation upon the part of the government to restore to him moneys advanced in the belief at the time that they would be repaid to him" * * *.

The case of *Heirs of Emerson v. Hall* relied upon by Respondent, is not in point, since the claim of the heirs was held in that case to be a nonentity.

The case of *Heirs of Emerson v. Hall*, 13 Peters 409, 413, was relied upon by Price in the case of *Price v. Forrest*, 140 U. S. 410, in support of the contention that the bounty to Price was a mere gift, precisely as it was relied upon by Respondent in support of his contention in the Court below that Petitioner's War Minerals claim is a mere gift; and that the decision in *Heirs of Emerson v. Hall* is inapplicable to the instant case, is clearly shown both by the decision in *Price v. Forrest* and that in *Heirs of Emerson v. Hall*.

In *Heirs of Emerson v. Hall*, 13 Peters 409, 413, the facts were these: By decree of the District Court of Louisiana, claims of William Emerson, surveyor, and the collector and naval officer associated with him in prosecuting for the forfeiture of the *Joseph Secunda*, a vessel condemned for violation of the slave trade, were allowed for a portion of the sale of the property condemned; and the decree was afterwards reversed and the whole proceeds adjudged to the United States. Emerson afterwards died, and Congress passed an act entitled, "An Act for the

relief of Beverly Chew, the heirs of William Emerson and the heirs of Lorain"; under which the sums adjudged to these officers were directed to be paid as provided by the act.

Creditors of William Emerson claimed the share of the relief fund granted to him, and the Court denied their claim on the ground that Emerson's act was not done at the request of any officer of the government or by the sanction of any law.

In *Price v. Forrest*, 173 U. S. 410, the Court, at page 425, 426, in distinguishing *Price v. Forrest* from *Heirs of Emerson v. Hall*, bases the distinction on the ground that the relief granted Emerson was not based upon any moral or legal obligation of the Government. The Court in *Price v. Forrest*, at page 25, says:

"His Acts imposed no obligation legal or equitable, on the government to compensate him for his services."

The Court, in *Price v. Forrest*, in its decision then quotes the language of the decision in *Heirs of Emerson v. Hall*, 13 Peters, 409, 413, as follows:

"The claim is an non-entity. Neither in law nor in equity has it any existence. A benefit was conferred on the government, but this was not done at the request of any officer of the government nor under the sanction of any law or authority."

II

ALTHOUGH THE WAR MINERALS RELIEF CLAIMS, GENERAL SPEAKING, ARE BASED SOLELY UPON THE GOVERNMENT'S MORAL AND EQUITABLE OBLIGATION TO PAY THEM, PETITIONER'S CLAIM, BY REASON OF SAID PEREMPTORY DEMAND, IS BASED UPON THE GOVERNMENT'S LEGAL AS WELL AS MORAL OBLIGATION.

1. *Since the Company's War Minerals claim is for loss of its mine, and losses in the acquiring, developing and operating of its mining property, and the right to recover the losses arose from and became attached to the property, such right, upon the insolvency of the corporation, followed the property and passed by cession and succession to the receiver as an officer of the Court for the benefit of the ultimate sufferers from the losses.*

Comegye v. Vasse, 1 Pet. 193;

Erwin v. United States, 97 U. S. 392, 396;

Phelps v. McDonald, 99 U. S. 298.

The creditors of the Cuyuna Minneapolis Iron Company by giving the credit represented by their claims, and its stockholders by furnishing the money to finance the mining operation through the purchase of its capital stock (R. pp. 13, 14, 19, 66), responded to the urgent needs of the government. The money represented by the claims of creditors, and that furnished by the stockholders by purchasing the corporation's capital stock, entered into and formed a part of the property of the insolvent corporation. Petitioner's War Minerals claim is for indemnity for losses suffered by reason of government

interference with, occupation and use of, and injury and damage to said property, and is a claim growing out of and attached to the property; upon the insolvency of the corporation and appointment of the receiver the creditors, whose claims, and stockholders whose paid-in capital stock, represented money paid to the corporation, for which the Government received the benefit, became the ultimate sufferers for whom the Act was intended to afford relief; and upon the above mentioned principle, as well as upon the plainest principles of right and justice, petitioner's claim then passed to the receiver for their benefit and the benefit of the parties entitled thereto. Gen. Stats. Minn. 1923, Sec. 8013, (G. S. 1878 C 76), *Comegye v. Vasse*, 1 Peters, 195, 203, 213, 215; *Minnesota Thresher Mnf. Company v. Langdon*, 44 Minn., 37, 39; *Erwin v. United States*, 97 U. S. 392, 396, *Phelps v. McDonald*, 99 U. S. 298, 303; *Pumpelly v. Green Bay Company*, 13 Wall 166, 177.

In *Comegye v. Vasse*, 1 Pet. 195, the claim was against the Spanish government by a bankrupt, for damages growing out of the capture of vessels and cargoes of which claimant was the underwriter, the bankrupt claiming that at the time he was adjudged a bankrupt the claim was not transferable, and did not pass to the assignee in bankruptcy. In holding that the claim passed to the assignee in bankruptcy the Court, speaking through Mr. Justice Story, as the leading case in establishing said principle, at page 213, says:

"In general it may be affirmed that mere personal torts which die with the party, and do not survive to the personal representatives, are incapable of passing by assignment; and that vested rights, *ad rem* and in *rem*, possibilities coupled with an interest, and claims growing out of, and adhering to, property, may pass by assignment."

And at page 215 the Court further says:

"The right to indemnity for an unjust capture, whether against the captors or the sovereign; whether remediable in his own courts, or by his own extraordinary interposition, or grants upon private petition, or upon public negotiation; is a right attached to the ownership of the property itself, and passes by cession to the use of the ultimate sufferer."

Another decision, confirming the establishing of this principle, is *Erwin v. United States*, 97 U. S. 392, 396, in which the relief claimed by Erwin was for the value of cotton captured by the military forces of the United States during the war of the rebellion. The cotton was taken by capture under the authority of Congress. By the Act of March 12, 1863, it was enacted that any person claiming to be the owner of such property may "at any time within two years after the suppression of the rebellion prefer a claim therefor in the Court of claims, and upon proof * * * that he has never given aid and comfort to the rebellion, may receive the proceeds of the sale of such property.

Erwin did give aid and comfort to the rebel-

lion, never applied for pardon and did not prefer his claim within the two years. It was held in *Haycraft v. United States*, 22 Wall 81, that the Court of claims had no jurisdiction of such claims. Congress, however, passed a law in February, 1877, authorizing the Court of claims to take jurisdiction of the claim; and under that Act, and after Erwin had been adjudged a bankrupt, he filed his petition for the relief granted by the Act of March 12, 1863.

The Court of claims held that the claim passed to the assignee in bankruptcy, and upon appeal by Erwin the Court, in overruling his ground of appeal, that at the time of the adjudication in bankruptcy the claim was not property and was not capable of being enforced in any Court, speaking through Mr. Justice Field, at page 396, says:

“This argument is unsound. When the appellant filed his petition in bankruptcy, his claim against the government was property, though of uncertain value * * *.

“Claims for compensation for the possession, use or appropriation of tangible property constitute personal estate equally with the property out of which they grow, although the validity of such claims may be denied and their value may depend upon the uncertainties of litigation or the doubtful result of an appeal to the legislature. A demand of a bankrupt, which is out-lawed, must go to the assignee; for contingences may arise in many ways which will give value to it. Demands against the government, if based upon considerations which would be valid between individuals, such

as services rendered or goods taken, are property, although there be no Court to investigate and pass upon their validity and their recognition and payment may depend upon the caprice or favor of the legislature." (Here the Court quotes in full the part of the decision in *Comegye v. Vasse*, 1 Peters 193, above quoted in this brief).

In *Phelps v. McDonald*, 99 U. S. 298, 304, which was a claim for relief by Act of Congress for indemnity for unjust capture, the case of *Comegye v. Vasse*, 1 Pet. 193, was cited, and the principle there established confirmed. The question was whether the claim passed to the assignee of the bankrupt claimant, the claimant claiming that it did not, on the ground, (a) that at the time of the adjudication in bankruptcy the claim was worthless having only a possible value, and (b) that the claim was incapable of being enforced in any Court.

In holding that the claim passed to the assignee in bankruptcy the Court, through Mr. Justice Swayne, says:

"There is no element of donation in the payment ultimately made in these cases * * * Nor is it material that the claim can not be enforced by a Court under municipal law which authorizes such proceedings."

The Court then states the principle established by these cases, in substantially the same language employed in *Comegye v. Vasse*, 1 Pet. 193, and then continues:

"The right to indemnity for unjust capture or distruction of property, whether the

wrong-doer be a government or an individual, is clearly within the category."

Petitioner's claim, we think, falls within the principle established by these decisions.

2. *The stimulation of Petitioner's claim, at first by published appeal, later became characterized by the peremptory demand or requisition of March 22, 1918, whereby the claim was given the basis of a legal as well as moral obligation, and made transferable upon the above principle stated in Par. II-1, as well as upon the ground applicable to claims based solely upon moral obligation, as stated in Par. I-2, (a), (b), (c).*

Act of March 2, 1819, Sec. 5, as amended.

Act of October 5, 1918 (40 Stat. 1009).

Pumpelly v. Green Bay, Etc., Canal Co., 13 Wall. 166, 177.

Liggett and Meyers Tobacco Co. v. United States, 274, U. S. 215, 220.

(a) The Act of October 5, 1918, authorized the requisition of Petitioner's mining property, and Section 5 of the Act of March 2, 1919, directed the Secretary of the Interior to adjust and liquidate the losses suffered therefrom as well as losses suffered from compliance with stimulation by request.

Section 5 of the Act of March 2, 1919, as amended by the Act of 1921, directs the Secretary of the Interior "to adjust, liquidate and pay such net loss as have been suffered * * * by reason of producing or preparing to produce

either manganese, chrome, pyrites or tungsten in response to any personal, written, or published request, *demand*; solicitation or appeal, from any of the government agencies mentioned in said Act" * * * (Italics supplied).

The definition of the word demand is, "to ask or call for with authority; to ask or call for urgently, peremptorily, or imperiously; as, to *demand* surrender." (Webster's International Dictionary.) The word Requisition is defined by the same authority as, "to demand with authority." The demand by the authorized agents of the Government, accompanied by a threat, was a requisition.

By the Act of October 5, 1918, (40 Stat. 1009) the agents of the government were authorized to demand of the miners the production of the minerals named including manganese. Section 1 of the Act provides that,

"By reason of the existence of a state of war, it is essential to the national security and defense and successful prosecution of the war, and provide for the maintenance and support of the Army and Navy, to provide for an adequate increased supply * * * of the following named minerals * * * to-wit: * * * Manganese * * * (as the President may from time to time determine to be necessary for the purpose aforesaid * * *."

Section 3 authorized the President to take over mines producing the therein named minerals, and provides:

"The United States shall make just compensation, determined by the President, for

the taking over, use, occupation or operation by the government of any such necessities or any such land, deposit, mine, smelter, or plant, or part thereof."

The Act of October 5, 1918, was approved so near the close of the war that it was not generally enforced by the Secretary of the Interior or any of the war time agencies of the government. The approval of the Act, however, was anticipated by the government in its requirements of the Cuyuna Minneapolis Iron Company, and the Merritt Development company, which were under the same management and of which Franklin W. Merritt was President and Neal Crowley was Secretary and Treasurer. (R. p. 27); and the peremptory demand of March 22nd, 1918 (R. p. 8), made as a requisition upon both of these companies (See Par. XII of Petition, R. pp. 7, 9, 27), admitted by Respondent, (See Par. XII of Answer, R. p. 32), was recognized and ratified by the provision in Section 5 providing for compensation for losses suffered by reason of obedience to Government demand as well as compliance with Government request.

(b) The Government's acquiring of the Company's mine and mining property by its peremptory demand of March 22, 1918, was a taking of the property in the exercise of the right of eminent domain.

Pumpelly v. Green Bay, Etc. Canal Co.,
13 Wall. 166, 177.

Liggett and Meyers Tobacco Co. v. United States, 274, U. S. 215, 220.

It is admitted that early in 1918 the government faced a crisis owing to the very limited supply of manganese. (R. pp. 6, 32). At the conference which Franklin W. Merritt, President of the Company, was summoned to attend at Washington, on March 22, 1918, with the representatives of the Shipping Board and War Industries Board, said Merritt, as President of the Company,

“was ordered to do everything within the power of the company to produce every ton of manganese possible regardless of costs or consequences and further informed that were not every effort exerted and results obtained the Government would take over and operate the property itself.” (R. pp. 8, 9.)

The agents of the government did not offer to purchase or lease the Company's property. They did not ask the Company's consent, but depended upon and acted in anticipation of the compulsory provisions of Section 5 of the Act of March 2, 1919, providing for paying losses suffered by reason of compliance with Government *demand*, and in anticipation of the Act of October 5, 1918, further providing for the national defense and for just compensation for “taking over, use, occupation or operation by the government of * * * any such land deposit, mine * * * or plant or any part thereof.” The entire Act of March 2, 1919 including said Section 5 thereof, and the Act of October 5, 1918, are all parts of one body of law, and as such should be construed together. Section 5 which

is a part of the Act of March 2, 1919, is connected with and expressly made dependent upon the Act of October 5, 1918, by language in said Section 5, describing the minerals therein as follows:

“said minerals being enumerated in the Act of Congress approved October fifth, nineteen hundred and eighteen, entitled ‘An Act to provide further for the national security and defense by encouraging the production, conserving the supply, and controlling the distribution of those ores, metals, and minerals which have formerly been largely imported, or of which there is or may be an inadequate supply’.”

The command given by the government to the Cuyuna Minneapolis Iron Company in the National Defense Building at Washington on March 22, 1918, (R. p. 8), was so peremptory, imperious and compulsory as to leave no doubt that the Government would have taken the property for public use had the company refused compliance; and as the Acts of 1919 and 1918 authorized a requisition of the Company's property for public use, the command and compliance was in effect a taking of the company's property by the right of eminent domain.

In *Liggett and Myers v. United States*, 274 U. S. 215, 220, naval supplies were had, under an order by the President for such supplies pursuant to the Acts of March 4th and June 15, 1917; and the Court held that it was not an offer to purchase so that the delivery made a contract, but that the property delivered under the

order was taken by eminent domain. The Court at page 220, says:

"The President was empowered to take immediate possession of its plant to manufacture the tobacco products called for * * * And it is to be presumed that the plant would have been taken if plaintiff had refused compliance."

In *Pumpelly v. Green Bay Etc. Canal Co.* 13 Wall 166, a leading case upon this point, the Court says:

"It would be a very curious and unsatisfactory result, if, in construing a provision of constitutional law, always understood to have been adopted for protection and security to the rights of the individual as against the government, and which has received the commendation of Jurists, statement and commentators, as placing the just principles of the common law on that subject beyond the power of ordinary legislation to change or control them, it shall be held that if the government refrains from the absolute conversion of real property to the uses of the public, it can destroy its value entirely, can inflict irreparable and premanent injury to any extent, can, in effect, subject it to total destruction, without making any compensation, because, in the narrowest sense of that work, it is not taken for the public use."

(c) The Act of October 5, 1918, in effect, ratified the requisition of the company's property by the peremptory demand of March 22, 1918; and Section 5 of the Act of March 2, 1919, both ratified the requisition and provided for compensation therefor.

Although the Act of October 5, 1918 became a law too near the Armistice to be of general use, it nevertheless authorized or ratified such requisitions of mining property as the agents of the Government had deemed it necessary to make; and, that Section 5 of the Act of 1919 was intended to provide a remedy for obtaining compensation for mining property taken by the agents of the Government by demand or impressment to meet the urgent needs of the government in time of war, is shown by the provision in said Section 5 requiring the Secretary to adjust and liquidate not only losses suffered by the miner in complying with government request, but also losses which the miner suffered by the government's taking of his property by peremptory demand.

The peremptory demand upon the Cuyuna Minneapolis Iron Company having been made by the Raw Materials Division of the War Industries Board at a meeting of the Board in the National Defense Building in Washington, it was made with authority or apparent authority of the Government (R. p. 9); and since the Company yielded obedience to the demand as an authorized impressment, and the requisition was ratified by the government's acceptance of the fruits thereof, and Congress, by Section 5 of the Act of 1919, provided compensation for losses for property so taken by the Government's demand or requisition, the Government is estopped to assert that the requisition was unauthorized.

There was no inconsistency in providing in the same section for payment of losses suffered in complying with Government request, the right of recovery of which is based solely upon the government's moral obligation, and losses suffered by the Government's taking and use of the miner's property by peremptory demand or impressment, the right of recovery of which is based upon the government's legal as well as moral obligation.

III

RESPONDENT AND HIS PREDECESSORS IN OFFICE, BY REPEATED ACTS IN RELATION TO PETITIONER'S CLAIM, HAVE WAIVED AND ARE ESTOPPED TO ASSERT THE DEFENSE THAT PETITIONER LACKS CAPACITY TO MAINTAIN THIS ACTION, OR THAT THE RIGHT TO ENFORCE SAID CLAIM DID NOT PASS TO THE RECEIVER AS AN OFFICER OF THE COURT.

1. *The effect of the appointment of the receiver was to put all of the property of the corporation, including its War Minerals claim, in the hands of the receiver as an officer of the Court and representative of the corporation, and the parties in interest, and not as an assignee.*

Vaughlin v. Northrup, 15 Pet. 1;

Union Bank of Chicago v. Kansas City Bank,
136 U. S. 223, 236;

Minnesota Thresher Mnfy. Co. v. Langdon,
44 Minn., 37, 39;

Hause v. Newell, 60 Minn. 150, 152;
State of Minnesota v. Red River Valley Elevator Company, 69 Minn. 131, 135.

(a) The situs of the War Minerals claims is not at the seat of the government.

Such claims, being debts due from the Government, (*United States v. Realty Company*, 163 U. S. 427, 440, 441), have no locality at the seat of government, but a receiver appointed in the state of the domicile of the creditor who brought the sequestration action has authority to collect them and receipt therefor. *Vaughlin v. Northrup*, 15 Pet. 1; *United States v. Borchertling*, 185 U. S. 223, 233; *Price v. Forrest*, 54 N. J. Equity 669, 684.

(b) The receiver by virtue of his appointment, as an officer of the Court and representative of the parties in interest, became vested with the right to maintain actions to enforce claims in favor of the corporation, without any further order of the Court.

General Statutes Minn., 1923, Sec. 8013
 (G. S. 1878, Chap. 76, Sec. 9).

Minnesota Thresher Mfgy. Company v. Langdon, 44 Minn. 31, 39.

Hause v. Newell, 60 Minn. 48.

Uland v. Haugan, 70 Minn. 349, 355.

Red River Valley Lumber Co., 69 Minn. 131, 135.

The action in which the receiver was appointed was a sequestration action (R. pp. 3, 37), brought under and pursuant to Section 8013, General Statutes Minn. for 1923 (G. S. 1878,

Chap. 76); and the Court of last resort of that State, in construing said Statute and the laws governing such actions, has held that a receiver by virtue of the order of his appointment as receiver in a sequestration action, is authorized to liquidate and collect claims of the corporation, and empowered without any further order, as an officer of the court and representative of the corporation, to bring actions in his own name to enforce all debts due it and all choses in action in its favor. *Minnesota Thresher Manufacturing Company v. Langdon*, 44 Minn. 31, 39; *Hause v. Newell*, 60 Minn. 480; *Uland v. Haugan*, 70 Minn. 349, 355.

In *Minnesota Thresher Company v. Langdon*, 44 Minn. 37, 39, it is said:

"The sequestration of the property of a corporation by an adjudication of its insolvency, and the appointment of a receiver of its property and effects, under the provisions of Chapter 76, is in the nature of an attachment or execution in behalf of all its creditors. The receiver has substantially the same powers and functions as an assignee in bankruptcy, or a receiver upon a creditor's bill or proceedings supplementary to execution. He succeeds to the rights of the creditors as well as of the insolvent corporation, and has the power to enforce the rights which the creditors, but for the proceedings, might have enforced in their own behalf * * *. Everything becomes assets in his hands, and hence in the custody of the law, which were assets as to creditors as well as what were assets as to the corporation."

In *Hause v. Newell*, 60 Minn. 481, 482, the plaintiff, a receiver of a corporation, appointed in a sequestration action under G. S. 1878, C. 76 (G. S. 1923, Sec. 8013), brought the action in the Municipal Court of the City of St. Paul to recover the amount due on defendant's subscription to the capital stock of the corporation. Plaintiff did not have any order authorizing the bringing of the action other than that of his appointment. The Court held that the appointment of the receiver in a sequestration action "necessarily includes permission and authority to bring suits to collect the assets, if necessary"; and in so holding the Court says:

"He (the receiver) is the trustee of an express trust and may bring an action in his own name in any Court having jurisdiction of the subject matter thereof, whenever it is necessary so to do, in order to collect claims due the corporation."

(c) The appointment of the receiver in a sequestration action does not deprive the corporation of the title to the property; and in carrying out the purpose of his appointment the receiver brings actions, as thereby authorized, in the right of the corporation and its creditors.

State of Minnesota v. Red River Valley Elevator Company, 69 Minn. 131, 135;

Union Bank of Chicago v. Kansas City Bank, 136 U. S. 223, 236;

Quincy, Etc. Ry. Company v. Humphries, 145 U. S. 82;

Porter v. Sabin, 149 U. S. 473;

New York P. and O. Ry. Co. v. New York L. E. and W. Co., 58 Fed. 268.

In *Union Bank of Chicago v. Kansas City Bank*, 136 U. S. 223, (236) it is held:

"A receiver derives his authority from the Act of the Court, and not from the act of the parties, at whose suggestion and with whose consent he was appointed; and the utmost effect of his appointment is to put the property from that time into his custody as an officer of the Court, for the benefit of the party ultimately proved to be entitled thereto, but not to change the title, or even the right of possession."

In *New York P. and O. Ry. Company v. New York L. E. and W. Ry. Company*, 58 Fed. 268, it is said:

"A Receiver represents no particular interest or class of interests. He holds for the benefit of all who may ultimately show an interest in the property. He stands no more for the creditors than the owner. They are not assignees, and the principle of common law applicable to assignees do not define or determine the character of a receiver's possession or its effect upon the rights of those interested in the property in their possession."

In *State v. Red River Valley Elevator Company*, 69 Minn. 131, 135, it is held:

Where a receiver of the assets of a corporation has been appointed in a sequestration action under section 9 C. 76 G. S. 1878 (G. S. 1923, Sec. 8013), the personal property of the corporation continues assessable in the same place at which it was assessable before the receiver was appointed, without reference to the residence of the

receiver. And in so holding the Court, at pages 134, 135, says:

"A receiver is not the owner of the property entrusted to his custody. He is merely an officer of the Court holding possession of the property for the benefit of those upon it may concern. His possession is, in one sense, their possession, although in another sense the possession of the Court. His appointment does not in any way affect the right or title to the property, but merely changes the possession and control of it for the purposes of the receivership. *The receivership neither works dissolution of the corporation nor deprives it of the title to the property. It merely delegates to the receiver, as an officer of the Court, the power to take charge of it, and dispose of it for the benefit of those entitled to it, viz, the corporate creditors and stockholders.*"—
(Italics supplied).

(d) The order appointing Neal Crowley as receiver expressly authorized him to bring this action.

The Order appointing Neal Crowley receiver, contains, as its basis, recitals of the death of Mal Clark, the pendency of the receivership, the Act of Congress of February, 1929, providing for the bringing of actions for review, and that said corporation has a claim to recover from the government additional amounts for losses suffered, and thereupon appointed said Neal Crowley as receiver in the place of said Mal Clark (R. p. 54).

2. *The acts of waiver and estoppel above referred to are as follows:*

(a) The award for the adjusted items of petitioner's claim was paid upon an acceptance signed by the receiver and Manton M. Wyvel, Attorney (R. pp. 37, 53).

(b) The award was paid to Mal Clark, the former receiver, and credited as such payment in his receivership account in the sequestration action in which he was appointed receiver (R. pp. 37, 53).

(c) Manton M. Wyvel, named in said acceptance as attorney, (without any statement therein for whom he was acting), was paid for his services in the matter of said claim by said Mal Clark, receiver, as shown by his said receivership account (R. pp. 37, 53).

(d) Respondent answered to the merits adopting as his theory of the case that the receiver as an officer of the Court, had legal capacity to maintain the action, and that upon the appointment of the receiver the right to collect and enforce said claim passed to the receiver as an officer of the Court for the benefit of those entitled thereto.

(e) In his said Answer Respondent's predecessor in office alleges and admits the receiver's right to enforce said claim No. 1259 and to maintain this action, by repeatedly designating said claim, in allegations regarding it, as "Petitioner's

War Minerals Relief Claim" (See Ans. R. pp. 32, 33, 34).

(f) Respondent entered into a written stipulation with Petitioner dated January 5, 1932, and now on file herein, for presenting the records of said claim at the trial of said action by typewritten copies, the trial to be upon the merits and issues presented by said petition and answer (R. pp. 35, 50).

(g) Thereafter Respondent entered into a further written stipulation with Petitioner, for fixing an early date for the trial of said action, such trial to be upon the merits and issues presented by said petition and answer (R. pp. 50, 51).

(h) Respondent adhered to his said theory of the case, without any notice to Petitioner of the adoption by him of a different theory, until the opening of the trial of said action on the 21st day of June, 1932, when Respondent, without any notice to Petitioner, or his attorneys, moved to dismiss the petition on the ground that the right to collect and enforce said claim No. 1259 for compensation, was not a property right, and did not pass to the receiver, and that the petition did not set forth a cause of action (R. pp. 36, 51).

3. *In these acts of Respondent every essential element of an equitable estoppel appears.*

Beyer v. LeFevre, 186 U. S. 114, 118, 22 Sup-Ct. 765, 46 L. Ed. 1080;

Moshier v. Frost, et ux, 110 Ill. 206;

Attorney General, ex rel v. A. Booth Co.,
143 Mich. 89.

(a) Respondent's predecessor, in paying the partial award to the receiver of the corporation, knowingly assumed a position at variance with that which respondent now seeks to assert.

(b) He ratified that position by filing his answer herein admitting petitioner's right to enforce the claim and maintain this action as an officer of the Court for the benefit of the parties entitled thereto, and by repeatedly alleging and designating the claim as "Petitioner's claim." (c) He entered into a written stipulation with Petitioner for presenting the records of said claim No. 1259 at the trial of this action by typewritten copies; and another written stipulation for setting said action for trial upon the issues formed by the petition and said answer with its said admissions. Respondent thereby caused petitioner to incur the expense of preparing to try, and the expenses of the trial of said action, in reliance upon the position thus assumed by respondent. He did not attempt to withdraw from that position, or avoid the admissions of said answer, until the action was called for trial. (d) To permit respondent now, when it better serves his changed theory of defense, to withdraw from the position thus assumed and repeatedly ratified, would, as to petitioner, be inequitable and unjust.

In *Moshier against Frost, et ux*, 110 Ill. 206, is held that,

“Parties are precluded from contradicting their solemn admissions and statements made when acted on by others.”

4. *Since the Court had jurisdiction of the subject matter and the parties, Respondent's motion to dismiss the petition does not present any jurisdictional question, and therefore the principle of estoppel applies.*

Cooper v. Reynolds, 10 Wall, 308, 316;

Toltz v. St. Louis, Etr. Ry Co., 19 U. S. App. 581;

Voorhees v. Bank of United States, 2 Peters 449;

Grignon v. Astor, 2 How. 319, 341;

Otis v. The Rio Grande, 1 Woods 279;

Sheahan v. Madigan, 275 Ill. 372, 377;

Vaughlin v. Northrup, 15 Peters 1;

Minnesota Thresher Mnfy. Co. v. Langdon
44 Minn. 31, 39;

Hauser v. Newell, 60 Minn. 480.

The grounds of the motion to dismiss the petition, to which Appellant claims the said act of waiver and estoppel applies, are set forth in Paragraph 42 of Respondent's Amended Answer, and are substantially as follows:

(a) That the petition fails to state a cause of action arising under the Act of February 13, 1929, pursuant to which it purports to have been filed” (R. p. 59).

(b) “That the War Minerals claim of the Cuyuna Minneapolis Iron Company was settled and paid in full * * *” (R. pp. 58, 59).

(c) That the receiver bringing the action as an officer of the Court and representative of the corporation, and the corporation which filed the claim after the appointment of the receiver, are not essentially the same claimant within the meaning of the Act (R. p. 59).

(d) That the right to compensation for losses provided by the War Minerals Relief Act is without pecuniary value, does not constitute property, and therefore did not pass to the receiver (R. pp. 59, 60).

(e) That petitioner, because a foreign receiver, has no right to maintain this action (R. p. 60).

The court was competent by its constitution to decide on its own jurisdiction, and to exercise it to a final judgment, and therefore its decision that the right to collect and recover compensation for Petitioner's losses passed to the receiver was conclusive unless appealed from. *Grignon v. Astor, et al*, 2 How. 319, 341.

Neither of the grounds of Respondent's motion to dismiss the petition presented a jurisdictional question. Since the Court had jurisdiction of the parties, and the subject matter, the motion to dismiss called into exercise the Court's power to decide; and as the Court, having jurisdiction, decided that the company's right to collect and recover compensation for its losses and for the taking and use of its property, passed to the receiver, the principle of estoppel applied, and Respondent, by his said acts, waived the right

to claim, and became estopped to assert, that such right to recover compensation did not pass to the receiver. Since the questions presented by the motion to dismiss the petition were not jurisdictional questions, Respondent was as firmly bound by the Court's decision through his act of estoppel as he would have been by his stipulated consent thereto.

Respondent, in the Court below, claimed that the receiver's right to maintain the action and collect and recover compensation for the Company's losses, and use by the Government of its mining property, was jurisdictional; but it was not jurisdictional in the sense that it was not a matter for determination by the Court. The jurisdiction of the Court was challenged to determine that question. As said in *Otis v. The Rio Grande*, 1 Woods 279,

"When the jurisdiction of the Court depends upon a fact which the Court is required to ascertain in its decision, such decision is final until reversed in a direct proceedings for that purpose."

In *Sheahan v. Madigan*, 275, Ill. 372, 377, upon this point, the Court said:

"When a Court has jurisdiction of the subject matter and the parties, its judgments or decrees can not be questioned collaterally no matter how erroneous they may be. * * * The immunity rests upon the power to hear and determine the case, and it is not affected by any error, however gross."

5. *The Doctrine that the Government is not estopped by acts of its agents beyond the scope of their employment has no application.*

Counsel for Respondent in the court below claimed that the doctrine of estoppel does not apply, basing the claim upon the decision in *Pine River Logging Co. v. United States*, 186 U. S. 279, 291. But in the *Pine River Logging Co.* case it was held merely that the government was not estopped to assert its right to recover for timber cut beyond the quantity and quality specified in the contract, by the unauthorized and wrongful act of its agents in waiving or altering the contracts.

In the *Pine River Logging Co.* case the agents of the Government were acting beyond and contrary to the contract of their employment; while in the instant case the agents of the Government were acting within the scope of their employment, and the government ratified their acts by receiving and retaining the benefits so long as it served its purpose to do so (R. p. 29), and paying the partial award for losses, upon an acceptance signed by the Receiver of the Company, to be credited to the account of the Receivership (R. p. 53).

IV.

THE DECISION IN ICKES, SECRETARY OF THE INTERIOR VS. CUYUNA MINING AND INVESTMENT COMPANY, ASSIGNEE OF JAMES E. GIBBON, RECEIVER OF THE NORTHERN MINNESOTA ORE COMPANY, 63 APP. D.C. 91, 69 FED. (2nd) 662, DOES NOT RULE THE INSTANT CASE.

1. *The facts in the Cuyuna Mining and Investment Company case are widely different and the ground of the decision in that case does not apply to the facts in the instant case.*

In the Cuyuna Mining and Investment Company case the Northern Minnesota Ore Company filed its war Minerals relief claim under the Act of March 2, 1919 and received an award thereon. It went into receivership in 1927, and on October 30th, 1928, nearly four months before the Act of 1929 was passed, James E. Gibbon, the receiver of the Ore Company, under an order of the Court, made a sale purporting to cover, in general terms, all the assets of the Northern Minnesota Ore Company, to the Cuyuna Mining and Investment Company.

This Court held the claim "not assignable under the decree in the receivership proceedings so as to vest the assignee with the right to petition for reopening of consideration of the claim," and stated the ground of its decision as follows:

"At the time of the receivership sale, the claim of the Minnesota Ore Company, under both the 1919 and 1921 acts, had been ad-

justed by the Secretary of the Interior. No appeal or review was open to the claimant. The case was closed. The act of 1929 had not been passed, hence the Minnesota Company had no right of action against the United States which could pass by sale." *Ickes v. Cuyuna Mining and Investment Company Assignee, etc.*, 63 App. D. C. 91, 93.

All that the decision in the Cuyuna Mining Company case holds is that the sale by the receiver of the Ore Company, did not vest the purchaser with a right of action not then in existence and in urging this as the ground for the reversal decision rendered by this Court (63 App. D. C. 91), the learned Counsel for the Government, at page 10 of Appellant's brief in that case says:

"The Cuyuna Company bought only what was in existence when it consummated its purchase. The judgment appealed from, therefore, should be reversed."

And on page 15 of their brief Counsel further says:

"It is impossible to understand how the receiver could transfer a non-existing right of action through a judicial sale."

Counsel for the Cuyuna Mining and Investment Company claimed that although the right of review did not mature until the passage of the Act of 1929, nevertheless an equitable inchoate right or interest in the right of review passed by the sale. No mention of this claim is

made in the decision (63 App. D. C. 91), for the obvious reason that such an equitable right or interest in expectancy could be transferred only by an equitable assignment, and no equitable assignment of such equitable right or interest appears ever to have been made.

To constitute an equitable assignment of a contingent interest and right in expectancy, it must show on its face the assignee's equities and be supported by the showing of a valuable consideration, *Bayler v. Commonwealth*, 40 Pa. 27, 80 Am. Dec. 551; and the intent to assign such an interest or right, and the subject matter, must be expressed in specific terms. *Hillsdale Distillery Company*, 129 Minn. 223, 227; *Lawrence on Equity Jurisprudence*, Vol. 1, Sec. 238; *Hospes v. Northwestern Mfg. and Car Company*, 48 Minn. 174, 199. The description of the property sold by the receiver of the Northern Minnesota Ore Company to the Cuyuna Mining and Investment Company does not specify, embrace, include or mention any equitable assignment of the contingent interest in the inchoate right of review then under consideration in Congress, and which matured in the Act of 1929, and no showing was made that the Cuyuna Mining and Investment Company paid anything for such equitable right. As the receivership sale was a common law sale at public auction which did not name, could not transfer, and did not purport to transfer any inchoate or equitable right or interest, whether in said claim or otherwise, but legal rights and interests only, the

case necessarily turned upon the point, as held by the Court, that,

“The Act of 1929 had not been passed, hence the Minnesota Company had no right of action against the United States which could pass by the sale.”

The Court did not hold that the Northern Minnesota Ore Company did not have an equitable or inchoate interest in the claim, which did not pass by the receivership sale. On the contrary the Court at page 94 of its decision, says:

“Whether the Minnesota Company could have availed itself of the privilege conferred by the 1929 act, and had its claim reviewed by the Secretary, is not before us; but clearly plaintiff's company has acquired no such interest in the claims in question as entitles it to be heard.”

The words, “Whether the Minnesota company could have availed itself of the privilege conferred by the 1929 act * * * is not before us.” does not mean, as claimed by Counsel for Appellee, that the right to maintain the action for review would not vest in the receiver of an insolvent claimant corporation as an officer of the Court and representative of the corporation. That question was not before the Court. Moreover under the above authorities a claimant Minnesota corporation, in receivership in a sequestration action under the laws of that state, could maintain the action for review only by an action by the receiver as an officer of the Court and representative of the corporation. In *Minnesota*

Thresher Mnfg. Co. v. Langdon, 44 Minn at page 39, it is said:

“The receiver has substantially the same powers and functions as an assignee in bankruptcy, or a receiver upon a creditor’s bill or proceedings supplementary to execution.” And in *State v. Red River Valley Elevator Co.*, 69 Minn. at p. 135, it is said:

“The receivership neither worked a dissolution of the corporation, nor deprives it of the title to the property. It merely delegates to the receiver, as an officer of the Court, the power to take charge of it, and dispose of it for the benefit of those entitled thereto, viz. the corporate creditors and stockholders.”

It would be very remarkable, as well as unreasonable, if the right to relief and compensation, provided by the War Minerals Relief Act expressly for corporations as well as individuals, should, as to a claimant corporation, be withdrawn upon its becoming insolvent, the very time when the relief would be most needed to meet the corporation’s obligations; and that is especially true in the instant case where the claim for relief and compensation arises under Government stimulation commencing in Government request, and later increased by the Government’s peremptory demand having the effect of an impressment (R. pp. 8, 39).

2. *The Act of 1929 provides a better remedy for enforcing the War Minerals Relief claims, but does not change their character.*

(a) The reference in the decision in the Cuyuna Mining and Investment Company case to the "Adjusted Claims."

The language on page 4 of the decision in the Cuyuna Mining and Investment Company case, 63 App. D. C. 41, 69 Fed (2nd) 662, that "the adjusted claims, mere gratuities, never did constitute legal claims, or vested rights that could be enforced in any tribunal, hence they were incapable of conveyance even by operation of law," relates only to the *adjusted* items of the claims, which were paid prior to the Act of 1929, providing for the remedy by enforcement in a Judicial Court.

The true meaning of this language was to show that the true ground of the decision, viz, "The Act of 1929 had not been passed, hence the Minnesota Company had no right of action against the United States that could pass by sale," was not affected by any right of enforcement in a Judicial Court prior to the Act of 1929.

This language of the decision distinguishes between rejected items of a claim which can be enforced in a Judicial Court under the Act of 1929, and the adjusted items of a claim, for the enforcement of which no remedy by action in a Judicial tribunal was provided prior to the act of 1929. The distinction made by the language is as wide and distinct as that between claims having a remedy for their enforcement

by action in a Judicial Court and those not having such remedy.

(b) *Congress and the Supreme Court concur in holding that congressional gratuities based upon the Government's moral obligation have pecuniary value as property and are transferable.*

By the Act of 1929 making War Minerals Relief claims enforceable in a Judicial tribunal, Congress, in accordance with the decisions of the Supreme Court, (*United States v. Realty Company*, 163, U. S. 427, 440; *Williams v. Heard*, 140 U. S. 529, 539; *Allen v. Smith*, 173 U. S. 389, 395) construed the claims to be—not mere gifts but rights based upon the government's obligation, possessed of pecuniary value as property, and capable of being transferred.

A claim to a gift (if it can be called a claim) is incapable of being enforced in a Judicial Court, and, by the same token, is not transferable. The Act of 1929 stamps the War Minerals Relief claims as enforceable in a Judicial Court, and by being thus made enforceable in a Judicial Court they are construed by Congress to have pecuniary value as property and to be transferable, as congressional gratuities based upon the Government's moral obligation had been previously construed by the Supreme Court. (See *United States v. Realty Company*, 163 U. S. 427, 440 and other cases above cited). The terms enforceable in a Judicial Court, and transferable, as applied to a chose in action, are correlative terms only in the sense that a

claim enforceable in a Judicial Court is transferable. The converse, as we have pointed out, is not true.

3. The moral obligation upon which Petitioner's War Minerals Relief Claim is based, and which gives to it pecuniary value, (admitting for argument only that the Government's peremptory demand did not give rise to a legal obligation), is stronger than that in the cases above cited in which the Supreme Court has uniformly held that Congressional claims based solely upon moral obligations have pecuniary value and are transferable.

As hereinbefore pointed out (Par. I-1), the statement regarding Section 5 of the Act of 1919, in the decision in *Work v. Rives*, 267 U. S. 175 at page 181, that "it was a gratuity based on equitable and moral considerations," cites and includes, as a part of the Court's holding, page 439 of the decision in *United States v. Realty Company*, 163, U. S. 427, and page 402 of the decision in *Allen v. Smith*, 173 U. S. 389. The citation at said page 402 is as follows:

"Such Act was passed as was held in *United States v. Realty Company*, 163 U. S. 427, in recognition of a moral obligation to those who put in their crops the previous year upon the faith of the bounty law then in existence." (Italics supplied.)

Since in the Realty Company case, as stated on pages 440, 441 of the decision, "there was enough in the case, as presented to Congress, upon which to base the assertion that there was a moral and honorable claim upon the public

treasury which that body had a constitutional right to recognize and pay," there certainly was enough, and more than enough, for that purpose in the instant case.

Therefore the language of the decision in the Realty Company case, at page 441, that "*the nation broadly speaking owes a debt to an individual when the claim grows out of general principles of right and Justice; when, in other words, it is based upon consideration of a moral or merely honorary nature, such as are binding upon the conscience or the honor of an individual, although the debt could obtain no recognition in a Court of law,*" applies with equal if not greater force to the instant case.

In the Realty Company case the only basis of the moral obligation held by the Court to have pecuniary value as property and to constitute a debt, was the Act of October 1st, 1890 (26 Stat. 567, 583), which was unconstitutional and was adjudged void. If the circumstance of the Realty Company's planting a crop of cane under the unconstitutional and void Act of October, 1890, placed the Government under a moral and honorary obligation to provide the relief of the sugar bounty gratuity, how much greater was the Government's moral obligation to grant to Petitioner compensation for losses in a mining operation which was necessary to public safety, in time of war, and was stimulated both by published appeal and the peremptory demand of March 22, 1918, accompanied by a threat of the

Government to take over the Company's mining property if the demand was not obeyed.

WILIAM V. HEARD, 140 U. S. 529, 539.

(Par. I-2-b.)

The moral and honorary obligation of the gratuity forming the basis of value in the instant case, (assuming for argument only that the peremptory demand of March 22, 1919, did not give rise to a legal as well as a moral obligation), would be far more binding upon the conscience and honor of an individual, than that in the case of *William v. Heard*. In the Heard case the claim was for "enhanced insurance premiums," which were merely incidental to the war of the rebellion and from which the Government received little or no benefit; while Petitioner's War Minerals Relief Claim represents expenditures solicited, needed and demanded by the Government, and for which the Government obtained just what it wanted, viz, as thoroughly equipped mine, ready for the delivery of immense quantities of high grade manganese ore had the war continued (R. pp. 29, 10.)

Moreover, speaking generally as to Petitioner's claim and all War Minerals Relief claims, it was understood by the Government, in making its solicitations and demands, and by the miners in complying therewith, that the war might suddenly end and great losses be incurred. And it was impliedly understood between the miners and the Government that the miners had

the right to rely and did rely upon the moral and honorary obligation assumed by Government to recompense the miners for their net losses. Compliance with government stimulation, whether by published appeal or peremptory demand, required large capital expenditures for development work, sinking shafts, and constructing mines, and for mining machinery and equipment. As the war might end even before these costly preparations were completed, no miner would be justified in incurring the expenditures except in reliance upon the Government's moral obligation to make good the losses—an obligation which the Government had theretofore uniformly honored and held sacred. For the officers of the government to call the War Minerals Relief, based upon such moral and honorary obligations as these, a mere gift, would be ungrateful and unjust, and would savor more of an insult to the miners than of sound reasoning.

Parish v. Cortelyou, 30 App. D. C. 45, 54, affirmed in *Parish v. McVeagh*, 214 U. S. 124, 134. (Par. I-2-b-c.)

The right of Parish to reimbursement for losses was based solely upon the Government's moral obligation; for the Court of claims decided that he had no legal right of recovery. The Government had paid Parish for all the ice it contracted for. Parish's claim was for preparing to deliver ice in excess of the amount needed, or required by the Government's contract.

The moral obligation of the Government in the instant case, to pay the Company for its losses of expenditures which the Government required the Company to incur in developing and constructing upon its property a mine and mining plant to meet the Government's war time needs, was far more binding upon the conscience than that to pay Parish for ice which the Government did not need, did not receive and did not contract for. Since the amount of ice was expressly limited in accordance with the express terms of the contract, the effect of the contract was to weaken rather than strengthen the moral obligation.

Compliance with the Government's published appeal of April 16, 1917, in the instant case, necessarily required the Company to abandon its purpose to strip the property for open pit mining, the only profitable peace time's method of mining (R. pp. 30, 4), and to incur the large expenditures for an underground mining plant, with its mine, mining equipment and machinery, shafts, drifts and other underground development. This extensive and expensive work, which the Court in its Memorandum Opinion of February 21st, 1933, finds was a government operation (R. p. 40), was brought to completion shortly prior to the close of the war. Thus the Government acquired just what by its stimulation it required, a thoroughly equipped and well organized mine, of which Commissioner Briar says in his Memorandum in Review (R. p. 29):

"It is admitted that, on November 11, 1918, the Company had a splendidly organized Company and was ready to deliver an immense amount of the ore which was needed."

No one can consider these facts without reaching the conclusion that the Government thereby placed itself under the deepest moral and honorary obligation to reimburse the Company for its losses, and that the Company had the right to rely and did rely upon the Government's moral obligations, as well as upon its legal obligation arising from its peremptory demand of March 22, 1918.

In *Parish v. Cortelyou*, 30 App. D. C. 45, 54, this Court followed the decision in *Williams v. Heard*, 140 U. S. 529, 539, and *United States v. The Realty Company*, 163 U. S. 427, 440, 441, in holding that Congressional grants of relief, based upon the Government's moral obligation only, have pecuniary value as property, and are capable of being transferred by operation of law. These cases hold that a claim against the Government, although based upon its moral obligation only, is a debt; and that as such it has pecuniary value and is transferable. And in the *Parish* case this Court, adopting the same line of reasoning, in answer to the contention that the Act was solely for the relief of Joseph W. Parish, and makes no provision for the succession of his personal representatives, at page 54, says: "This is true, but the act recognizes the right of Parish to the payment of money and

makes appropriation therefor." (Italics supplied.)

In *Parsh v. Cortelyou*, 30 App. D. C. 45, the Court in holding "that the right to enforce the relief survived, and passed to the personal representatives, at page 54, says: "There is no apparent reason why the right should be limited to Joseph W. Parish solely, and there is nothing expressly negating its succession in case of his death." While in the instant case, upon the principles of Justice and common honesty, the right to enforce the relief passed to the receiver as an officer of the Court for the benefit of the parties entitled thereto, viz., the creditors whose claims, and the stockholders whose paid in capital stock (R. pp. 25, 66), represent money included in the above expenditures by the Company of which the Government received the entire benefit.

Price v. Forrest, 173 U. S. 410, 425, 426, (Par. I-2-b).

In this case the payment by Price to one Van Nostrand, his successor in the office of purser for the United States Navy, of the sum of \$75,000.00 was no benefit to the Government, and created a moral obligation only (6 Opin. Att's Gen. 357); and the Court, in its decision (173 U. S. 410, 425, 426), following the authorities above cited, held that the right to recover the claim for the relief, although based on the government's moral obligation, had pecuniary value and passed to the receiver appointed in a creditors suit in the State of New Jersey, to be

disposed of under the orders of the New Jersey Court for the benefit of a creditor of the beneficiary of the relief. The moral obligation of the government, upon which the War Minerals Relief claims are based, is incomparably greater than was its obligation to reimburse Price for the money he paid to Van Nostrand.

4. *Rights for the recovery of losses under Congressional acts, in the nature of gratuities based upon the Government's moral obligation, are created by the suffering of the losses and not by the Acts of Congress.*

The effect of the decision of the tribunal of Arbitration of Alabama claims, at Geneva, on September 18, 1892, making an award of \$15,000,000.00, and determining that the enhanced premiums of insurance were not valid legal claims upon any principle of international law, was to establish conclusively that the claim of the Heard, in *Williams v. Heard*, 140 U. S. 529, 539, was based on the sole ground of the Government's moral and honorary obligation.

The adjudication in bankruptcy of the Heard was on August 5, 1875, the Act of Congress creating a commission of Alabama claims, on June 5, 1882, and the award of said commission determining the amount to be paid on each claim, in 1886. In deciding that the claim passed to the assignee in bankruptcy under the assignments therein, on August 5, 1875, the Court in *Williams v. Heard*, 140 U. S. 529, held:

"A claim decided by the Court to be a valid claim is property which passed to the

assignee of a bankrupt under the assignment made prior to the decision."

And in so holding the Court at page 540 says:

"While, as already said, there were no means of compelling Congress to distribute the fund received in virtue of the Geneva Award, and while the claimant was remediless with respect to any proceedings to retrench his losses, nevertheless there was at all times a moral obligation on the part of the Government to do justice to those who suffered in property * * * There was thus at all time a possibility that the government would see that they were paid. There was a possibility of there being some time valuable. They were rights growing out of property, rights, it is true, that were not enforceable until the passage of the act of Congress for the distribution of the fund. *But the Act of Congress did not create the rights. They had existed at all times since the losses occurred. They were created by reason of losses having been suffered. All that the Act of Congress did was to provide a remedy for the enforcement of the right.*" (Italics supplied.)

5. *The Receiver's succession to the Company's right to recover its losses does not depend upon the Act of 1929, giving the right of enforcement in a Judicial Court.*

The claim of Respondent that the receiver lacked the right to bring this action because no right to enforce the Minerals Relief claims in any Court existed prior to the Act of 1929, is unsound. The transferability of a claim does not depend upon its being capable of being en-

forced in a Court. *Erwin v. United States*, 97 U. S. 392, 369; *Phelps v. McDonald*, 99 U. S. 392, 396; *Comegye 1 Pet.* 193 (Par. II-1).

The right of the miners to recover their losses arose when the losses were suffered (*William v. Heard*, 140 U. S. 529, 539, 540; *Work v. Rives*, 267 U. S. 175, 181). The right of recovery of Petitioner's claims based both upon the government's moral obligation, and its legal obligation arising from its peremptory demand of March 22nd. 1918, (*United States v. Realty Company*, 163 U. S. 427, 440, 441; *Parish v. Cortelyou* 30 App. D. C. 45, 54; *Pumpelly v. Green Bay, etc., Canal Co.*, 13 Wall. 166, 177).

Both the 1919 and 1929 acts were and are remedies for enforcing payment of the losses suffered. Congress, being of the view that the Act of 1919 was defective and inadequate, passed the Act of 1929 to correct a defect in the earlier act, and for the better enforcement or reimbursement of the losses. There is nothing in the remedy of the Act of 1919 which could prevent a succeeding Congress of equal power from subsequently passing an act for a better remedy. The Act of 1929 is not subordinate to that of 1919, because it is amendatory of it. The Government cannot maintain any rightful claim to a continuation of the advantages to it of the defects in the old remedy on the ground, urged in the Court below, that the act of 1919 is substantive law and that of 1929 adjective law. No one can have any vested right in a particular remedy or its defects. *Hill v. Merchant's Mutual Ins. Co.*,

134 U. S. 515; *Lewis's Sutherland Stat. Con.* (2Ed.) Vol. II, Sec. 674 (482).

6. *The receiver of the claimant corporation, bringing this action as its representative, is within the meaning of the act of 1919, the same claimant as the corporation itself which filed the claim with the Secretary after the receiver's appointment.*

Upon the appointment of the receiver in the sequestration action in Minnesota, on December 1, 1921, the custody of all the assets of the corporation, and the right to collect and enforce payment of the losses suffered under the Government's stimulation, passed to the receiver as an officer of the Court and representative of the corporation and its creditors and stockholders. *State of Minnesota v. Red River Valley Elevator Co.*, 69 Minn. 131, 135. The corporation thereafter had no right to maintain actions to recover assets or enforce claims. G. S. Minn. 1923, Sec. 8013 (G. S. 1870, Chap. 76); *Minnesota Thresher Mnfg. Company v. Langdon*, 44 Minn. 31, 39.

It is not claimed that, by reason of the corporation's lack of power to collect or enforce its assets and choses in action, its claim was not duly filed with the Secretary. On the contrary Respondent's predecessor in office accepted the filing of the claim by the corporation as a proper filing, and paid the partial award upon a written acceptance signed by the receiver who accounted therefor in the sequestration action in which he was appointed, there to

be paid by order of the Court for the benefit of the corporation and its creditors and stockholders (R. pp. 37, 49, 53).

The provision in the Act of 1929 limiting the right of review to "any claimant who has heretofore filed his claim with the Secretary of the Interior," was intended to prevent the purchase and filing of claims for "mere speculative purposes" (See Sec. 5 Act of 1919, 4th Proviso), and not to deprive those claimants, who were made insolvent by the losses suffered by expenditures under the Government's stimulation, from receiving just compensation therefor through payment thereof to the creditors whose claims, and the stockholders whose fully paid stock, represent said expenditures so incurred by the Company, and of which the Government received the entire benefit.

The provision in Section 5 of the Act of 1919, "that said Secretary shall make such adjustments and payments in each case as he shall determine to be just and equitable imposes upon the Secretary an obligation as binding in its relation to insolvent claimants as to solvent claimants. The suffering of its losses by the Company under the Government's stimulation created a debt of the Government for the reimbursement of the losses which arose at the time of the suffering of the losses. *William v. Heard*, 140 U. S. 529, 540. Adapting the language of the Supreme Court in *United States v. Realty Company*, to the instant action, "the nation, speaking broadly, owes a debt to an individual when

his claim grows out of general principles of right and justice; when, in other words, it is based upon considerations of a moral or mere honorary nature, such as are binding on the conscience or honor of an individual." *United States v. Realty Company*, 163 U. S. 427, 440, 441; *Work v. Rives*, 267 U. S. 175, 181.

Claims which are enforceable in a Judicial Court are transferable; and the determination by Congress, expressed in the Act of 1929, making the War Minerals claims enforceable in a Judicial Court, that such claims are transferable, is in accordance with the principle established by the decisions of the Supreme Court in *Williams v. Heard*, 140 U. S. 529; *Parish v. Cortelyou*, 30 App. D. C. 45, 54; *Parish v. McVeigh*, 214 U. S. 124, 134; *Price v. Forrest*, 173 U. S. 410, 425—that claims against the Government based upon its moral or honorary obligations are transferable. In the instant action Petitioner's claim is transferable on the ground of the above principle and authorities and also on the ground of the Government's legal obligation based upon its peremptory demand of March 22, 1918 (R. pp. 8, 39). *Pumpelly v. Green Bay etc., Canal Company*, 13 Wall. 166; *Liggett and Meyers v. United States*, 274, U. S. 215, 220. Although the enforceability of a claim in a Judicial Court establishes its transferability, it is not necessary in order to render a claim transferable that it be capable of being enforced in such Court. *Erwin v. United States*, 97 U. S. 392, 396; *Phelps v. McDonald*, 99 U. S. 298.

The meaning of the words "any corporation, in section 5, includes insolvent corporations."

The Secretary is required by Section 5 of the Act of 1919 to make such adjustments and payments, to any corporation, as well as to any person or firm, "as he shall determine to be just and equitable." The words "any corporation" cannot, consistently with their true import, be construed to mean *solvent* corporations to the exclusion of insolvent corporations, especially as such a construction would defeat the provision requiring the Secretary to make such payments "as shall be just and equitable." The meaning of the word "corporations" necessarily connotes the members or stockholders of a corporation claimant, since limiting the meaning of the word, in case of its insolvency, to the juristic being, which exists as a fiction of law, to the exclusion of the stockholders who constitute the corporation, would be neither just nor equitable.

The government, in calling upon the miners for additional mines and more extensive mining operations to meet the crisis due to the lack of manganese ore required for carrying on the war (R. pp. 58, 39), well knew, as did the miners, that the end of the war might come at any time, and, by ending the demand for manganese, render the miners undertakings worthless even before they were brought the point of profitable production. Under these circumstances the Government in applying the urge of its stimula-

tion, and the mining corporations, and other miners, in complying therewith, undoubtedly knew, and must have taken into consideration that the losses, which the miners were liable to incur, were likely to make them insolvent.

The facts, therefore, show, that parties to the transaction understood that the Government's moral obligation to make good the losses of a corporation claimant, which made it insolvent, was as great and as clear as its obligation to make good losses which did not result in the claimant's insolvency. To hold that the moral and honorary obligation of the Government was to make good such losses only as were not sufficient in extent or severity to cause insolvency, would not accord with our idea of justice, and would make a mockery of the provision of the Act, "that the Secretary shall make such adjustments and payments as he shall determine to be just and equitable."

A corporation claimant does not lose its right of review by bringing its action through a receiver as its delegated representative.

The receiver in the instant action, as the representative of the corporation had the same right to bring this action which the corporation would have had if the corporation had remained solvent, and no receiver had been appointed. *Minnesota Thresher Mnfg. Company v. Langdon*, 44 Minn. 37, 39. A receiver of a corporation is not an assignee. *Union Bank of Chicago v. Kansas City Bank*, 136 U. S. 223. The disposition of the

proceeds of a claim by the receiver as the delegated representative of the corporation is substantially the same as the ultimate disposition which the corporation would make if solvent. In case of insolvency of the corporation such disposition is by order of the court, while, in case of its solvency, the order would be by order of its board of directors. In either case the proceeds would be disposed of for the benefit of the corporate creditors and stockholders, the ultimate suffers from the losses. *State v. Red River Valley Elevator Company*, 69 Minn. 131, 135. This difference in the method of disposing of the proceeds of the claim for the benefit of the corporate creditors and stockholders, the ultimate sufferers, is immaterial here. It certainly is no just ground for denying the right of an insolvent corporation claimant to the benefit of its claim, and it furnishes a very slim excuse for the action of the government in pleading the insolvency of the corporation, caused by losses which it is under obligation to pay, as its reason for refusing to pay such losses.

CONCLUSION.

1. The court below in its memorandum opinion, dated February 21st, 1933, found that the Secretary of the Interior in his final decision committed errors of law in rejecting the items of petitioner's claim in said memorandum set forth, amounting to \$123,765.64 (R. pp. 39-41); and determined that the secretary should consider, adjust and liquidate the said items of petitioner's claim amounting to said sum.

2. The company's original mining operation, on a limited scale with view to stripping the property for open pit mining, was, in compliance with the government's stipulation of April 17, 1917, changed from its original purpose into a government operation (R. pp. 5, 39), financed by the sale of the company's capital stock, and the issuance and sale of its bonds (R. p. 66); and it so continued until the property was taken by the government's peremptory demand of March 22, 1918, by which the company was ordered "to produce every ton of manganese ore possible regardless of costs or consequences," under a threat by the government to take over the property (R. pp. 8, 39), and which was in effect an impressment.

The mine with its machinery and equipment, and its underground development upon the large scale required, ordered, and demanded by the government, was, at great costs, completed shortly prior to the armistice; and it fulfilled the government's needs and requirements. Regarding it Commissioner Briar, in his memorandum says: "On November 11, 1918, the company had a splendidly organized company, and was ready to deliver an immense amount of ore which was needed" (R. p. 29).

3. The government's peremptory demand of March 22, 1918 (R. p. 28) gave to petitioner's claim the basis of a legal as well as moral and honorary obligation. *Pumpelly v. Green Bay, etc., Canal Company*, 13 Wall 166, 177; *Liggett*

and Meyers Tobacco Co. v. United States, 274 U. S. 215, 220 (Par. II-2).

4. The corporation's indebtedness to its creditors for money loaned and materials furnished, and to its stockholders for its paid in capital and amounts paid on account of the stockholder's super-added liability to creditors (R. pp. 25, 66), represents amounts expended by the corporation for its mineral rights and in constructing its said mine and mining plant, and, equipping it with its machinery and underground development; and, as the losses suffered by the corporation are amounts paid for and on account of said expenditures, the creditors and stockholders who furnished the money for said expenditures are the actual and ultimate sufferers and the persons or parties to whom the losses in justice and equity are required to be paid under the government's moral and honorary obligations.

5. Petitioner's claim, as a claim based upon the government's moral and honorary obligation—admitting for argument only that the government's peremptory demand of March 22, 1918, did not give rise to a legal obligation—is transferable on the ground that it is a claim “growing out of and adhering to property,” and passes by cession and succession through the corporation to its creditors and stockholders, the actual and ultimate holders.

Comegye v. Vasse, 1 Pet. 193 (Par. II-1).

6. Conceding for argument that the receiver's right, as the representative of the corporation, to collect its claim, and, by order of the court, pay it to its creditors and stockholders, the ultimate and actual sufferers of the losses, depends upon the transferability of the claim, petitioner has the right to maintain this action for the reasons hereinbefore stated, that War Minerals Relief claims are based upon the government's moral, if not legal, obligation, constitute debts of the government, have pecuniary value and are transferable.

Work v. Rives, 267 U. S. 175, 181.

United States v. Realty Company, 163 U. S. 427, 439, 440.

Williams v. Heard, 140 U. S. 529, 539.

Allen v. Smith, 389, 395, 402.

Parish v. Cortelyou, 30 App. D. C. 45, 54.

Price v. Forrest, 173 U. S. 410, 422.

Parish v. McVeigh, 214 U. S. 124, 134 (Par. I, 1-2).

7. Respondent at the commencement of the action adopted as his theory of the case, and, by statements and acts relied upon by petitioner (R. pp. 37, 49-53), waived the right to claim and became estopped to deny, that respondent, as the representative of the corporation, was vested with the right to collect and enforce the corporation's claim. *Vaughlin v. Northrup*, 15 Pet. 1; *Minnesota Thresher Mnfg. Co. v. Langdon*, 44 Minn. 37, 39; *Porter v. Sabin*, 149 U. S. 473; *Otis v. The Rio Grande*, 1 Woods 275. "Parties are precluded from contradicting their solemn admissions and statements made when acted on

by others." *Moshier v. Frost*, 110, 111, 206 (Par. III-2, 3, 4).

Upon all of the ground here presented plaintiff claims that the judgment or decree appealed from should be reversed with directions that the court below enter its decree upon and in accordance with its memorandum opinion dated February 21st, 1933.

Respectfully submitted,

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Heard & Strong

No. 6537

**In the United States Court of Appeals
for the District of Columbia**

APRIL TERM, 1935

NEAL CROWLEY, AS RECEIVER OF THE CUYUNA-MINNEAPOLIS IRON COMPANY, A CORPORATION, APPELLANT,

v.

**HAROLD L. ICKES, SECRETARY OF THE INTERIOR,
APPELLEE**

BRIEF OF APPELLEE

NATHAN R. MARGOLD,
Solicitor, Department of the Interior,
FREDERICK BERNAYS WIENER,
Assistant Solicitor, Department of the Interior,
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**In the United States Court of Appeals
for the District of Columbia**

APRIL TERM, 1935

No. 6537

**NEAL CROWLEY, AS RECEIVER OF THE CUYUNA-
Minneapolis Iron Company, a Corporation,
appellant**

v.

**HAROLD L. ICKES, SECRETARY OF THE INTERIOR,
appellee**

BRIEF OF APPELLEE

STATEMENT OF THE CASE

This is an appeal by Neal Crowley, Receiver of the Cuyuna-Minneapolis Iron Company, from an order of the Supreme Court of the District of Columbia dismissing his petition in a War Minerals Relief case upon the authority of the decision of this Court in *Ickes v. Cuyuna Mining & Investment Company*, 63 App. D. C. 91, 69 F. (2d) 662 (1934), cert. den., 293 U. S. 562.

THE FACTS

The Cuyuna-Minneapolis Iron Company, a Minnesota corporation, acting through its own officers,

filed War Minerals Claim No. 1259 (R. p. 65) pursuant to the provisions of section 5 of the Act of March 2, 1919 (40 Stat. 1272). This claim was examined and on October 21, 1922, an award of \$183,747.30 was made by the Secretary of the Interior to "Cuyuna-Minneapolis Iron Company, c/o Manton M. Wyvell, Union Trust Building, Washington, D. C." (Exhibit "B" of the Petition, R. p. 31). Thereafter, on February 11, 1930, a suit in equity was commenced by "Neal Crowley as Receiver of the Cuyuna-Minneapolis Iron Company, a corporation", purportedly under authority of the act of February 13, 1929 (45 Stat. 1166), seeking review of the Secretary's award on the ground of alleged errors of law.

The Secretary of the Interior moved to dismiss the petition, upon the ground that the right to obtain a review of a War Minerals Relief claim in the Supreme Court of the District of Columbia under the 1929 act is confined to the claimant itself and cannot be exercised by a receiver or other legal representative of the claimant. Subsequently, the Secretary moved for leave to amend his answer to include this objection (R. p. 35).

The lower court denied the Secretary's motion for leave to amend, stating in its memorandum opinion that "this denial is not based on the exercise of discretion by the court as to allowing or denying amendment at this stage, but is based solely on the conclusion that the facts alleged in the proposed amended answer do not constitute a bar

to the petition for review of the final decision of the Secretary'' (R. p. 38).

On February 19, 1934, after the date of said memorandum, and before a decree had been entered in the present case, this Court decided *Ickes v. Cuyuna Mining & Investment Co.*, 63 App. D. C. 91, 69 F. (2d) 662 (1934), cert. den. 293 U. S. 562, where Mr. Justice Van Orsdel, speaking for the Court, pointed out that War Minerals Relief claims were "mere gratuities, never did constitute legal claims, or vested rights that could be enforced in any tribunal, hence they were incapable of conveyance, even by operation of law."

Accordingly, the Secretary petitioned for a rehearing on his motion to dismiss the petition herein and on his motion for leave to file an amended answer (R. p. 44). The Supreme Court of the District, *per* Mr. Justice Cox, granted the rehearing and dismissed the original petition on the authority of the *Cuyuna* case, pointing out (R. p. 56):

The question now presented has been fully argued orally and in briefs of counsel. Careful consideration of the arguments, as well as of the record and briefs filed in the Court of Appeals, has convinced me that the decision of that Court rests on the broad ground that claims under the War Minerals Relief act may not be transferred by operation of law and that the privilege of petitioning this court for review is limited to the original claimant alone and does not pass to the receiver of a corporate claimant.

Appellant has appealed from an order entered pursuant to this memorandum opinion.

THE ISSUES

The only real issue in the case is whether a War Minerals Relief claim may be transferred to the receiver of a corporate claimant, and this in turn involves the question whether the instant case is controlled by the decision of this Court in *Ickes v. Cuyuna Mining & Investment Co.*, *supra*.

OUTLINE OF ARGUMENT

1. The prior decision of this Court in *Ickes v. Cuyuna Mining & Investment Company*, *supra*, controls the instant case.

2. Appellant, petitioner below, is the assignee and legal successor of the claimant corporation.

3. Appellee, the agent of the United States, was not estopped from moving to dismiss the petition.

ARGUMENT

1. The prior decision of this court in *Ickes v. Cuyuna Mining & Investment Company*, *supra*, controls the instant case

It is submitted that the instant case is controlled by the prior decision of this court in *Ickes v. Cuyuna Mining & Investment Company*, 63 App. D. C. 91, *supra*.

The facts in that case were as follows: Following the passage of the War Minerals Relief Act of 1919 (40 Stat. 1272), the Northern Minnesota Ore Company, a Minnesota corporation, filed a claim with

the Secretary of the Interior. A partial award was made. In 1927 the assets of the Northern Minnesota Ore Company were placed in the hands of a receiver and on October 30, 1928, all the property, rights of action and other assets of the Northern Minnesota Ore Company were transferred and assigned by the receiver to the Cuyuna Mining & Investment Company. Following the passage of the act of February 13, 1929 (45 Stat. 1166), the Cuyuna Mining & Investment Company filed its petition in the Supreme Court of the District of Columbia for a review of the final decision of the Secretary.

The Secretary's defense to the petition denied the right of the plaintiff company to maintain the action upon the ground that the transfer by the receiver of the real and personal property and rights of action did not invest the transferee, the plaintiff company, with the authority, power, or right to maintain the suit. The judgment of the Supreme Court of the District of Columbia, adverse upon this matter of defense, was reversed by this Court, which held upon the authority of *Work v. Rives*, 267 U. S. 175 (1925), that War Minerals Relief claims were mere gratuities, that they were not legal claims against the Government and that they could not be transferred, even by operation of law.

After discussing the holding of *Work v. Rives*, 267 U. S. 175, *supra*, relative to the character of

the claims, Mr. Justice Van Orsdel, speaking for the Court, said (63 App. D. C. at 93, 69 F. (2d) at 664):

This decision was rendered prior to the passage of the 1929 act, but there is nothing in that act which in any way changes the character of the claims. The claims still remain purely in the nature of a gratuity by the government, and are not legal claims against the government, nor does the act create in the claimants any vested legal rights. The 1929 act limits the right of action to a claimant whose claims had been adjusted under the prior acts by the Secretary of the Interior.

* * * * *

At the time of the receivership sale, the claims of the Minnesota company, under both the 1919 and 1921 acts, had been adjusted by the Secretary of the Interior. No appeal or review was open to the claimant. The case was closed. The act of 1929 had not been passed; hence the Minnesota company had no right of action against the United States which could pass by the sale. The adjusted claims, mere gratuities, never did constitute legal claims, or vested rights that could be enforced in any tribunal; hence they were incapable of conveyance, even by operation of law. Whether the Minnesota company could have availed itself of the privilege conferred by the 1929 act, and had its claims reviewed by the Secretary, is not

before us; but clearly plaintiff company has acquired no such interest in the claims in question as entitles it to be heard.

This Court definitely placed its decision in the *Cuyuna* case upon its holding that War Minerals Relief claims cannot be transferred even by operation of law. And in doing so the Court was informed that this holding on the transferability of said claims would govern a number of pending cases in which petitions for review had been filed by widows, administrators, executors, and other legal successors of War Minerals Relief claimants. The brief of the Secretary of the Interior, which so informed the Court, concluded as follows (page 20):

The question of assignability has arisen in a number of suits instituted under the act of February 13, 1929. It has arisen in cases of assignment of right by claimants. It has arisen in cases where the War Minerals claimant died before a suit was instituted under the act of February 13, 1929, and in cases where the claimant instituted such a suit, but died before it was brought to hearing. In these classes of cases the widows, next of kin, or personal representatives have asserted the right to institute suit in the place of the deceased claimant, or else have attempted to revive and continue such suits where they were instituted by the claimant during his lifetime.

* * * * *

These cases all have depended upon the question: Is a right under the act of March 2, 1919, assignable? This question never has been presented to this court for answer, and it involves a very large amount of public money in the aggregate.

A broad decision of the question by this court would be desirable. * * *

The broad holding that "The adjusted claims, mere gratuities, never did constitute legal claims, or vested rights that could be enforced in any tribunal, hence they were incapable of conveyance, even by operation of law", was accepted by the trial court in the present case as the considered view of a Court fully cognizant of the effect its decision would have upon other cases.

Furthermore, it should be noted that the broad scope of this Court's holding was urged as a reason for granting certiorari by the Cuyuna Mining & Investment Company in its petition for writ of certiorari before the Supreme Court of the United States. In that petition it was said (page 6):

This case involves a question of general importance because the decision of the Court of Appeals unsettles the law as developed by many previous decisions, including decisions of this Court, which establish the right of succession by operation of law to claims generally against the Government of the United States which are based on moral and equitable obligations of the United States. Counsel for petitioner is informed by the

War Minerals Relief Commissioner that there are awaiting disposal some fifty cases of War Minerals Relief claimants in the same category as the instant case, and where there is involved the question of the right of succession to these claims by operation of law.

The Supreme Court denied the petition.

The authorities which appellant cites in favor of the transferability of the claim do not support him. In his brief he attacks the holding of the Supreme Court of the United States in *Work v. Rives*, 267 U. S. 175, *supra*, that War Minerals Relief claims are gratuities, as well as the holding of this Court in *Ickes v. Cuyuna Mining & Investment Co.*, 63 App. D. C. 91, *supra*, that the claims cannot be transferred by operation of law, on the ground that both these decisions are contrary to controlling precedents in the United States Supreme Court.

The cases cited by appellant were all cited and discussed (with the exception of *Comegys v. Vasse*, 1 Pet. 529 (1828), which involves the entirely unrelated point of a claim against a foreign nation) in the brief of the Cuyuna Mining & Investment Company filed with this Court and in its brief in support of the petition for certiorari filed in the Supreme Court of the United States. Since all these decisions were brought to the attention of this Court and the Supreme Court of the United States in the *Cuyuna* case, appellee submits that it is not necessary to review them further at this point.

What appellant seeks is, in effect, a rehearing of the *Cuyuna* case. Notwithstanding this Court's denial of a rehearing in that case one month after the filing of the original decision, notwithstanding the Supreme Court's refusal to review the decision, appellant is once more seeking to overturn the considered conclusions of this Court.

The Secretary of the Interior does not question any prior decision of this Court. He submits that the only point now for decision is whether the facts of the present case bring it within the rules previously laid down.

While, of course, in view of the decisions of the United States Supreme Court, it cannot be nor is it urged that denial of the petition for certiorari is an expression of opinion on the merits,

Hamilton-Brown Shoe Co. v. Wolf Brothers & Co., 240 U. S. 251, 258 (1916);

United States v. Carver, 260 U. S. 482, 490 (1923),

none the less where, as in the *Cuyuna* case, it is urged as a ground for the granting of certiorari that this Court "has not given proper effect to an applicable decision" of the United States Supreme Court—Rule 38 (5) (c), 286 U. S. 625—it is not without significance as to the correctness of the decision that certiorari has been denied. Consequently, it follows that the authorities now cited in appellant's brief, all of which were cited before this Court and before the Supreme Court on petition for certiorari in the *Cuyuna* case, represent

simply a belated plea for the reopening of a matter which must now be considered settled and laid at rest.

2. Appellant, petitioner below, is the assignee and legal successor of the claimant corporation

The appellant, "Neal Crowley as Receiver of the Cuyuna-Minneapolis Iron Company", appointed in a sequestration action under the Minnesota statutes (R. p. 48), is the assignee of the corporation under an assignment *by operation of law*. *His right is "like the right of a trustee in bankruptcy to the assets of the bankrupt"*, and Mr. Justice Cox so held in his memorandum opinion (R. p. 37).

The statute under which Crowley was appointed receiver, section 6634 of the General Statutes of Minnesota of 1913 (G. S. 1923, Sec. 8013), and the decisions of the Minnesota courts construing said section leave no doubt that the receiver is the legal successor of the corporation and not merely the custodian of its assets. This was pointed out in the memorandum opinion below, where it was said (R., p. 37), "The receiver in this case was appointed in a sequestration action in Minnesota brought to wind up the affairs of the corporation."

Section 6634 of the General Statutes of Minnesota of 1913 reads as follows:

Sequestration—Order of distribution.—
Upon complaint of a person obtaining judgment against a corporation or his representatives, made after the return unsatisfied

of an execution issued thereon, the court may sequester the stock, property, things in action, and effects of such corporation, and appoint a receiver of the same, and upon final judgment upon any such complaint the court shall order the property remaining, or the proceeds thereof, to be disposed of under its direction, proportionately in the following order:

1. In payment of the costs and expenses of the receivership;
2. Debts due the United States and the state of Minnesota, if any;
3. Taxes and assessments, if any;
4. Claims duly proved and allowed of clerks, servants, or laborers, for services performed within three months preceding the appointment of the receiver, if any;
5. Other claims duly proved and allowed.

After payment of the expenses of receivership and claims of creditors duly proved, the remainder, if any there be, shall be distributed pro rata among the stockholders proving themselves entitled thereto.

In *Arthur v. Willius*, 44 Minn. 409, 46 N. W. 851 (1890), the Supreme Court of Minnesota considered the powers of a receiver appointed in a sequestration action similar to the action in which Crowley was appointed receiver. The Court said:

* * * An action against a corporation, under chapter 76 of the General Statutes, *is in the nature of an action to wind up its affairs*, to collect and convert all its assets, and appropriate them ratably among cred-

itors, and to enforce the individual liability of stockholders and others to the extent of the deficiency of assets. As was said in *Merchants' Nat. Bank v. Bailey Manuf'g. Co.*, 34 Minn. 327, 25 N. W. Rept. 639, "it is an action not proceeding in the ordinary way of actions at law by trial of simple issues, judgment, and execution, but by the exercise of powers peculiar to the former courts of chancery." The proceedings are susceptible of being moulded into almost any form necessary to accomplish their purpose of securing a full and final adjustment of the rights and liabilities of all parties growing out of the corporate business. During the progress of the proceedings, new parties may be admitted or brought in and new issues introduced from time to time, as they become necessary *for the final winding up of the affairs of the corporation*, and the enforcement of all the rights of creditors. * * * (Italics added.)

To the same effect is the holding of the Supreme Court of Minnesota in *Minnesota Thresher Manufacturing Co. v. Langdon*, 44 Minn. 37, 46 N. W. 310, 311 (1890), where it is said:

1. The sequestration of the property of a corporation by an adjudication of its insolvency, and the appointment of a receiver of its property and effects, under the provisions of chapter 76, is in the nature of an attachment or execution in behalf of all its creditors. *The receiver has substantially the same*

powers and functions as an assignee in bankruptcy, or a receiver upon a creditors' bill or proceedings supplementary to execution. * * * (Italics added.)

In *St. Louis Car Co. v. Stillwater St. Ry. Co.*, 53 Minn. 129, 54 N. W. 1064, 1065 (1893), the court compared the power of a receiver appointed in foreclosure proceedings with the power of a receiver appointed in a sequestration action:

* * * The powers of the receivers in the two cases are entirely different. There are various classes of property that can be reached by a receiver under chapter 76 which could not be reached by a receiver appointed in a foreclosure suit. *The former has substantially all the powers and functions of an assignee in bankruptcy.* * * * (Italics added.)

In view of the foregoing authorities, the lower court's finding, that the rights of Crowley as receiver were like the rights of a trustee in bankruptcy and that he was appointed to wind up the affairs of the claimant corporation (R. p. 37), is obviously correct; and its order dismissing the petition herein upon the ground that a suit under the act of February 13, 1929 (45 Stat. 1166), cannot be brought by the legal successor or assignee of a claimant should be affirmed in view of this Court's holding in the *Cuyuna* case, *supra*, that "the adjusted claims, mere gratuities, never did constitute legal claims or vested rights that could be enforced

in any tribunal, hence they were incapable of conveyance, even by operation of law.”

In an attempt to escape the controlling effect of the decision of this Court in *Ickes v. Cuyuna Mining & Investment Co.*, 63 App. D. C. 91, *supra*, appellant contends that the claim of the Northern Minnesota Ore Company, the subject matter of the *Cuyuna* case, was a contingent equitable claim at the time of the receiver's sale therein and that this court based its decision therein upon the ground that such a claim could not be assigned at a common-law sale. This distinction cannot be drawn from anything said by this Court in the *Cuyuna* case; and, furthermore, the contention is untenable in any event in view of the circumstance that a receiver's sale is the act of a chancellor and is not therefore a common-law sale, as that term is generally understood.

Appellant in the course of a lengthy argument states that the Cuyuna-Minneapolis Iron Company was urged by published and personal appeals to increase its production of manganese ore, coupled with a threat to take over claimant's property if it did not comply with the request of the agents of the Government. The effect of appellant's argument is that Congress, in granting relief to the producers of so-called “war minerals”, should have given them a legal claim against the Government instead of granting them the gratuity established in the act of March 2, 1919 (40 Stat. 1272). The

Supreme Court of the United States clearly held in *Work v. Rives, supra*, that War Minerals Relief claims are not legal claims against the Government, and it follows that they do not have any of the attributes of legal claims, such as transferability. The court, after discussing the provisions of the act, said on page 181:

The above summary of section 5 clearly shows that Congress was seeking to save the beneficiaries from losses which it would have been under no legal obligation to make good if a private person. It was a gratuity based on equitable and moral considerations. *United States v. Realty Company*, 163 U. S. 427, 439; *Allen v. Smith*, 173 U. S. 389, 402. Congress did not wish to create a legal claim. It was not dealing with vested rights. It did not, as it did with the claims for supplies and services directly furnished the Government under the first and second sections of the Act, make the losses recoverable in a court, but expressly provided otherwise. It dealt with the subject with the utmost caution. It hedged the granting of the equitable gratuity with limitations to prevent the use of the statute for the recovery of doubtful or fraudulent claims or merely speculative losses. * * *

It should be noted that the record in the *Rives* case, in which the decision of this court was affirmed, clearly shows (page 6) that Logan Rives, the claimant, was personally urged by authorized agents of the Government to increase his produc-

tion of manganese. This court will take judicial notice of its own records. *Butler v. Eaton*, 141 U. S. 240 (1890). It follows that this appellant stands on no higher ground than the unsuccessful claimant in the *Rives* case.

Liggett & Myers Co. v. United States, 274 U. S. 215 (1927), cited by appellant, has no application at all to the case at bar. There the court, in an action to recover a balance claimed for tobacco products delivered to the Government, held that a continuing order for naval supplies during the late war, made without consulting the plaintiff as to price, quantity, time or place of delivery, was not an offer to purchase and that, therefore, the property delivered under it was taken by eminent domain. The power of eminent domain obviously could not have been exercised in the instant case since no property was taken from the claimant by the Government.

3. Appellee, the agent of the United States, was not estopped from moving to dismiss the petition

Appellant further contends that appellee was estopped from moving for leave to amend his answer to include the legal successor defense and to attack the jurisdiction of the court to entertain petitioner's suit, because of his action in stipulating with the attorney for the receiver, in referring in his original answer to the claim as petitioner's War Minerals Relief claim, in permitting the receiver to make a certain disbursement to his attor-

ney, and in permitting the attorney for the receiver to prepare for trial on the merits. It should be noted that the original award was made to the Cuyuna-Minneapolis Iron Company and not to the receiver, as alleged by appellant (R. p. 31).

This objection is untenable both in fact and in law. Appellant fails to allege how he was damaged by the defendant's action. The addition of another ground of defense would not relieve the petitioner of the necessity of preparing for trial on the merits, nor is it apparent how the delay in submitting the legal successor and jurisdictional defenses in the suit filed after February 13, 1929, influenced the receiver to pay in 1922 an attorney's fee of \$91,873.65 (one-half of the award) for services rendered before the War Minerals Relief Commission (R., p. 53).

The law is well settled that the basis of estoppel is that one party has been induced to act or desist from acting, to his detriment, by the action of the other party. *Leather Manufacturers' Bank v. Morgan*, 117 U. S. 96 (1886); *Wilber National Bank v. United States*, 294 U. S. 120 (1935). The present case presents no facts on the basis of which such an estoppel can be founded.

Moreover, even if the necessary factual basis of an ordinary estoppel existed, appellant's contention for an estoppel would still be untenable. It is well settled by the decisions of the Supreme Court of the United States that *the United States is not*

estopped by acts of its agents in entering into an arrangement or agreement to do or cause to be done what the law does not sanction or permit.

In the recent case of *Wilber National Bank v. United States*, 294 U. S. 120, 123 (1935), an action on a Government life insurance policy, it was shown that the Veterans' Bureau did not notify the insured of how a cash payment by him was allocated to premiums and other charges, did not notify him of his default in payments, and did not acknowledge, until after the insured's death, sums which were remitted as premium payments after the policy had lapsed and when reinstatement had become impossible. The Supreme Court held that the Government was not estopped to rely upon the lapse of the policy, saying (p. 123):

Undoubtedly, the general rule is that the United States are neither bound nor estopped by the acts of their officers and agents in entering into an agreement or arrangement to do or cause to be done what the law does not sanction or permit. Also, those dealing with an agent of the United States must be held to have had notice of the limitation of his authority. *Utah Power & Light Co. v. United States*, 243 U. S. 389, 409; *Sutton v. United States*, 256 U. S. 575, 579.

In view of this decision, it is clear that the defenses set forth in the amended answer are not precluded by a prior recognition by Government of-

ficials of appellant as a transferee of a War Minerals Relief claim, if it is now held that such claims cannot be transferred, even by operation of law.

No distinction exists between the instant case and the *Wilber National Bank* case upon the ground that the defendant in the *Wilber* case was the United States Government and in the instant case is an individual, the Secretary of the Interior. The Secretary of the Interior, having been designated by the Act of February 13, 1929, *supra*, to defend, on behalf of the United States, suits brought under that Act, he acts herein as the agent of the United States, and consequently since awards made pursuant to the court's order are paid out of the public funds of the United States, the doctrine of the *Wilber* decision applies with full force to the instant case.

Finally, objection to filing the amended answer is untenable since the amended answer presents a defense going to the jurisdiction of the court over the parties. The Act of 1929 limits the jurisdiction of the court to claimants who had theretofore filed War Minerals Relief claims under the Act of March 2, 1919. The amended answer denies that petitioner—appellant here—is a War Minerals Relief claimant who filed a claim under the War Minerals Relief Act, and prays the court to dismiss the suit for lack of jurisdiction. The granting or refusal of leave to amend, moreover, is within the

discretion of the trial court and its decision is not reviewable upon appeal. *Chunn v. City and Suburban Railway*, 23 App. D. C. 551 (1904).

CONCLUSION

It is respectfully submitted that this appeal is controlled by this Court's decision in *Ickes v. Cuyuna Mining & Investment Co.*, *supra*, and upon the authority of that decision the decree of the Supreme Court of the District of Columbia should be affirmed.

Respectfully submitted.

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No. 6537

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April Term, 1935.

NEAL CROWLEY, As Receiver of the Cuyuna Min-
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vs.

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Appellee.

Appellant's Reply Brief

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Appellant's Reply Brief

I.

APPELLEE'S BRIEF DOES NOT SQUARELY MEET THE ARGUMENTS IN APPELLANT'S BRIEF (Par. I, pp. 21-35) TO THE CONCLUSION THAT CONGRESSIONAL GRATUITIES BASED UPON MORAL OBLIGATIONS HAVE PECUNIARY VALUE CONSTITUTE PROPERTY AND ARE CAPABLE OF BEING TRANSFERRED.

1. *The words, "a gratuity based on equitable and moral considerations, United States v. Realty Co., 123 U. S. 427, 439 x x; Allen v. Smith, 173 U. S. 389, 402," in the decision in Work v. Rives, is opposed in meaning to the words "mere gratuities."*

So far from attacking the holding in *Work v. Rives*, 267 U. S. 175, as claimed by appellee, ap-

pellant's role is that of defender of the decision in that case, from the attack of appellee in seeking to read out of that decision, immediately following the words, "It was a gratuity," the words "based on equitable and moral, considerations, *United States v. Realty Company*, 163 U. S. 127, 139, *Allen v. Smith*, 173 U. S. 389, 402." which define the meaning of the word "gratuities" as used in the decision, and are an essential part of it.

In *Ickes v. Cuyuna Mining and Investment Company*, 69 Fed. (2nd) 662, the Mining and Investment Company neither had nor claimed to have any equitable right to the claims of the Northern Minnesota Ore Company. It must be kept in mind that the question in that case was whether the mining company acquired any right under the Act of February 13, 1929, by a common law sale and transfer to it of the assets of the Ore Company, on October 30, 1928, four and one-half months before that Act was passed.

The Secretary of the Interior, at page ten of his brief, in the Cuyuna Mining and Investment Company case, urged the following as the grounds of reversal:

"Indeed, when the transfer was made by the Northern Minnesota Ore Company to the Mining and Investment Company, there was no right of action or claim then existing, and if one were created by subsequent act, it did not pass to the Cuyuna Company, and was not purchased by it, under a sale made prior

to the creation of the right of action. The Cuyuna Company bought only what was in existence when it consummated its purchase. The judgment appealed from, therefore, should be reversed."

And in making this reasoning of counsel the ground of the reversal decision in *Ickes v. Cuyuna Mining and Investment Company*, 69 Fed. (2nd) 662, the court at page 624, says:

"At the time of the receivership sale, the claims of the Minnesota Company, under both the 1919 and 1921 acts, had been adjusted by the Secretary of the Interior. No appeal or review was open to claimant. The case was closed. The act of 1929 had not been passed, hence the Minnesota Company had no right of action against the United States which could pass by sale."

The language of the decision immediately following the above statement of the ground upon which it is based, to-wit:

"The adjusted claims (items allowed) * * * never did constitute legal claims, or vested rights, that could be enforced in any tribunal, etc., * * *,"

does not refer to the rejected items which were disallowed by the Secretary through errors of law in his final decision, but relates to the "adjusted claims," or those items of the claim as filed, which were adjusted and allowed.

The language of the decision, immediately following the above statement of the ground on which it is based, was merely to point out that

there was nothing in the acts of Congress, prior to the Act of 1929, which could render claims capable of enforcement in any tribunal—such act, as shown in the statement of the ground of the decision, not having been passed at the time of the sale and transfer of the assets of the Northern Minnesota Ore Company.

The distinction made by the language of the decision, between these two classes of claims, viz., the rejected items disallowed by the Secretary through errors of law, and the items adjusted and allowed before the Act of 1929 was passed, is clear; for the latter class is characterized by the language of the decision, as claims that could not be enforced in any tribunal, while the former class may be enforced under the Act of 1929.

The statement in the opinion that “the adjusted claim (items allowed) in the final decision of the Secretary) * * * never did constitute legal claims, or vested rights, that could be enforced in any tribunal—a statement not essential to the reversal decisions in the Cuyuna Mining Company case—has its basis in the fact that prior to the Act of 1929, the decision of the Secretary was final. Appellant claims, however that the conclusion therefrom immediately following, viz., “hence they were incapable of conveyance, even by operation of law,” is dictum upon the question of the capability of War Minerals Claims to be transferred by operation of law, and contrary to the holding of the Supreme Court in *Work v.*

Rives, 267 U. S. 175, that the grant of the Mineral Relief Claims is a gratuity based on equitable and moral considerations, and contrary to the holdings in *United States v. Realty Company*, 163 U. S. 427, 439, 440—made a part of the decision in *Work v. Rives*, by reference thereto—in which it is held:

“The nation, speaking broadly, owes a ‘debt’ to an individual when his claim grows out of general principles of right and justice; when, in other words, it is based upon considerations of a moral or merely honorary nature, such as are binding on the conscience or the honor of an individual, although the debt could obtain no recognition in a court of law. The power of congress extends at least as far as the recognition and payment of claims against the government which are thus founded. To no other branch of the government than congress could any application be successfully made on the part of the owners of such claims or debts for the payment thereof. There recognition depends solely upon congress, and whether it will recognize claims thus founded must be left to the discretion of that body.”

And appellee’s contention that congressional gratuities, based upon moral obligations only, are “incapable of conveyance even by operation of law,” is also contrary to the holding of the Supreme Court in *Williams v. Heard*, 140 U. S. 529, 539, in which the court says:

“But no individual claimant had, as a matter of strict legal or equitable right any liens upon the fund awarded, nor was congress

under any legal or equitable obligation to pay any claim out of the proceeds of the fund. * * *

"There was undoubtedly a moral obligation on the part of the United States to bestow the fund received upon individuals who had suffered losses at the hands of the Confederate Cruisers, and in this sense all of the claims of whatsoever nature were possessed of greater or less pecuniary value. There was at least a possibility of their payment by congress, an expectancy of interest in the fund that is, a possibility coupled with an interest."

2. *The statement in the decision in Ickes v. Cuyuna Mining and Investment Company (supra), characterizing the gratuity as a "mere gratuity"—and which appellant claims is dictum—appears to rest upon no sound basis and no authority except Heirs of Emerson v. Hall, 13 pet. 409, 413, relied upon by the Secretary of the Interior in that case—a case in which the relief granted was obviously a mere donation or gift.*

Although appellee does not cite *Heirs of Emerson v. Hall*, in his brief on this appeal, he cited it in the court below, and still relies upon it, in support of his theory and contention that the decision in *Ickes v. Cuyuna Mining and Investment Company* 69 Fed. (2nd) 662, rules the instant case.

The exigencies of his case require appellee to give no consideration to the words, "based on equitable and moral considerations," immediately following the word "gratuity," in Chief Jus-

tice Taft's definition of the grant of War Minerals Relief, in *Work v. Rives* (*supra*), and no consideration to the decisions in *United States v. Realty Company* (*supra*) and *Allen v. Smith* (*supra*), which are cited in *Work v. Rives* (*supra*), as a part of said definition—the apparent purpose of omitting these considerations being to avoid the necessary conclusion from such definition that the claims have pecuniary value and are transferable, and so to fashion the decision in *Work v. Rives* as to bring it into apparent harmony with the case of *Heirs of Emerson v. Hall*, 13 Pet. 409, 413, on which appellee chiefly depends.

In *Ickes, Secretary of the Interior, Appellant, v. Cuyuna Mining and Investment Company* (No. 6537), 69 Fed. (2nd) 662, appellant on page 13 of his brief says:

“When *Work v. Rives* and *Heirs of Emerson v. Hall* are read together, they show that this right was not assignable.”

But the factual basis of these two cases are wholly dissimilar. In the case of *Heirs of Emerson v. Hall*, 13 Pet. 409, 413, the relief was not based upon any equitable or moral considerations, but was a mere act of charity or generosity. The case, therefore, was not applicable to the *Cuyuna Mining and Investment Company* case, and is not applicable to any case where the congressional gratuity is based upon equitable and moral obligations. *Price v. Forrest*, 173

U. S. 410, 425, 426 (see Appellant's Brief, pp. 31, 35).

3. *It was obviously the intent of Section 5 as amended—as determined by the above decisions of the Supreme Court—in consideration of the government's equitable and moral obligations to the miners, to grant the War Minerals Relief as a debt with the qualities of personal property.*

The first three lines of the first sub-paragraph of Section 5 of the Act of 1919, is as follows:

“The Secretary shall make such adjustments and payments as he shall determine to be just and equitable * * *.”

By this language congress recognizes a claim based upon equitable and moral obligations. *Work v. Rives*, 267 U. S. 175. This language could have no application to a mere act of generosity. *Price v. Forrest*, 173 U. S. 410, 425, 426.

The second sub-paragraph of the Act of 1921 provides as follows:

“That all claimants who in response to any personal, written or published request, *demand*, solicitation or appeal of any of the Government agencies mentioned in the act, in good faith expends money in producing or preparing to produce any of the ores, etc., * * * and have therefore filed or mailed their claims * * *, if proof in support of said claims clearly shows them to be based upon action taken in response to such request, *demand*, solicitation, or appeal, shall be re-imbursed such net loss as they have incurred *and are in justice and equity entitled to* from the appropriation in said act.” (Italics supplied.)

This provision of the Act of 1921 expressly provides that the government's obligation, admitting for argument only that it is solely an equitable and moral obligation, gives to the miner a right to be re-imbursed for his losses; for to be "entitled to" re-imburement is to have a right thereto. The statement in the act that the grant to the miners of re-imburement of their losses is a payment which they are entitled to, stamps the miner's claim as a debt, and not a mere donation.

These provisions of the Acts of 1919 and 1921 were construed by that part of the decision in *Work v. Rives* (*supra*), holding (a) directly, that the grant of the War Mineral's Relief was a gratuity based on equitable and moral considerations, (b) through the decision in *United States v. Realty Company* (*supra*), cited in and made a part of said decision in *Work v. Rives*, "that the nation, speaking broadly, owes a debt to an individual when his claim * * * is based upon considerations of a moral or merely honorary nature," and (c) through the decision in *Allen v. Smith* (*supra*), cited in and made a part of the decision in *Work v. Rives*, that the inchoate right of a deceased claimant to a congressional gratuity based upon moral considerations, "was a personal asset and passed to the executors."

These cases both confirm and are supported by the earlier case of *Williams v. Heard*, 140 U. S. 529, 539, 540, in which it is held that claims

arising from a congressional gratuity based upon moral obligations have pecuniary value (Appellant's brief, pp. 25, 26). No citation is needed to the conclusion that a claim against the government, constituting a debt of the government to the claimant, and having pecuniary value, is property and transferable.

It is ⁹⁵unreasonable to assert that War Minerals Relief Claims have no value because the Secretary's decision is final upon questions of fact as it would be to contend that claims enforceable in a Judicial Court have no value because of the wide discretion of the trial court. In either case an appeal lies for abuse of discretion.

4. That it was the intention of the War Minerals Relief Act, that the claims for losses, which the miners are entitled to, are, and shall be regarded as, debts of the government, having pecuniary value as personal property, is further shown by the following Bill which was introduced in the Senate on January 30, 1935, was recently passed by the Senate, and is now on the House calendar:

"A Bill to amend Section 5 of the Act of March 2, 1919, generally known as the War Minerals Relief Act."

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that no person who filed a claim in accordance with the provisions of section 5 of the Act entitled, 'An Act to provide relief in cases of contracts connected with prosecution of the war, and for other purposes,' approved March 2, 1919, shall be deprived of any of the benefits of

said Act as amended by the Act of February 13, 1929, by reason of failure to file suit under said amendment in the Supreme Court of the District of Columbia, or through abatement of any suit so filed.

Upon petition to the Secretary of the Interior in such abated suits and in claims wherein no suits were filed under the said amendment, the Secretary is hereby authorized and directed to review all such claims upon matters of fact and in the light of decisions of the Supreme Court of the District of Columbia in similar cases; and, in accordance with the provisions of said Act, as amended, to make awards or additional awards in said claims as he may determine to be just and equitable.

Sec. 2. The rights of any deceased claimant under section 5 of said Act shall be held and considered to descend to the legal representatives as personal property of such deceased claimant.

Sec. 3. This Act shall not authorize payment to be made of any claim not presented to the Secretary of the Interior within six months after its approval."

Section 2 of this bill is an express declaration by the higher branch of congress that it was the legislative intent, by the Acts of 1919 and 1921, that claims thereunder are, and shall be regarded as, personal property, and a statement in confirmation of the line of authorities of the Supreme Court holding that the grant of the War Minerals Act was a gratuity based upon equitable and moral considerations, and that claims thereon are

debts of the government, which have pecuniary value as property, and are transferable by operation of law.

Work v. Rives, 267 U. S. 175.

United States v. Realty Company, 163 U. S. 427, 440, 441.

Allen v. Smith, 173 U. S. 389, 399, 402.

Williams v. Heard, 140 U. S. 527, 539.

Parish v. Cortelyou, 30 App. D. C. 45, 54.

Parish v. McVeagh, 214 U. S. 124, 134.

Price v. Forrest, 173 U. S. 410, 425, 426.

The provision in section 2 of the Bill, declaring that it was the intent of the Acts of 1919 and 1921, that the claims thereunder should constitute personal property, applies equally to all claims whether of individual claimants or corporate claimants; and since the claims are personal property, they are equally transferable to the successor and legal representative of a deceased individual claimant or to the successor and legal representative of an insolvent corporate claimant.

To what is said on pages 15-17 of appellant's brief regarding the great moral, if not legal, obligation imposed upon the government by its stimulation and demand, to pay appellant's claim, and all War Minerals Claims, we here add the following excerpt from the report of the above bill by the Committee of Mines and Mining:

"Prior to the World War, ores of manganese, chrome, tungsten, and pyrites were imported free of duty from foreign countries

at prices which prohibited attempts at domestic production. During the war there was a scarcity of shipping with which to import these essential war minerals. Representatives of the government encouraged citizens of this country to engage in the production of these essential war minerals and offered certain inducements in connection therewith. Those who agreed to engage in the production of these minerals were assured that the war-time prices set by the government thereupon would be maintained until two years after termination of hostilities in order that they might recoup their investments.

However, in January, 1919, only a short time after the armistice, the War Trade Board, one of the government agencies that appealed for the domestic production of war minerals and which had laid an embargo against the further importation of foreign produced war minerals, summarily removed the embargo against the importation of minerals, thus nullifying the promises which had been made to the domestic producers and placing them in a position whereunder it would be impossible for them to compete."

5. Appellant is not an assignee of the Cuyuna Minneapolis Iron Company; but, as an officer of the court brings this action as its successor and legal representative.

The court in *Ickes v. Mining and Investment Company*, 63 App. D. C. 91, 69 F. (2nd) 662, did not decide that the right to enforce the claim of an insolvent corporate claimant would not pass to its receiver as its successor and legal rep-

representative. That question was not before the court. What the court did decide was, that—

“The Act of 1929 had not been passed, hence the Minnesota Company had no right of action *that could pass by sale.*” (Italics supplied.)

The right of action which Cuyuna Mining and Investment Company attempted to assert, not only did not exist, but the company claimed title to it as assignee of the Northern Minnesota Ore Company. The case of *Ickes v. Cuyuna Mining and Investment*, therefore, is not in point since appellant commenced the instant action after the Act of 1929 had been passed, and brought it, not as assignee of the corporation, but, as an officer of the court, in the right of the corporation and as its successor and legal representative.

The fact that the receiver, as an officer of the court and legal representative and successor of the corporation, has delegated powers comparable to those of an assignee in bankruptcy (*Minnesota Thresher Mfg. Company v. Langdon*, 44 Minn. 37, 39 (Appellant's brief, pp. 50-53), does not make the receiver an assignee. In *State v. Red River Valley Elevator Company*, 69 Minn. 131, 135, it is held:

“The receivership neither works dissolution of the corporation nor deprives it of the title to the property. It merely delegates to the receiver, as an officer of the court, the power to take charge of it, and dispose of it for the benefit of those entitled to it, viz., the corporate creditors and stockholders.”

The mining undertaking of the Cuyuna Minneapolis Iron Company, under the government's stimulation and demand, was transformed into a government enterprise (Opinion of Justice Cox, R. p. 40).

The losses were suffered in expenditures in constructing, equipping and developing a mine in obedience to the government's peremptory demand whereby the company—

“was ordered to do everything within the power of the company to produce every ton of manganese ore possible regardless of the costs or consequences * * *,”

under a threat that the government would take over the property (R. pp. 8, 39).

As a result of its demand the government got just what it wanted, viz., a thoroughly equipped mine from which the company “was ready to deliver an immense amount of the ore which was needed.” Memorandum of Commissioner Briar (R. p. 25).

The undertaking was financed by money paid by the company's creditors for the sale of its bonds, and by its stockholders for the sale of the capital stock (R. p. 66); and these creditors and stockholders, as the ultimate sufferers from the company's losses, in justice and equity, are entitled to have the re-imbursement therefor collected for their benefit by the receiver, as an officer of the court and the legal representative of the corporation.

The losses which the government became morally, if not legally obligated to pay were the cause, or contributing cause, of the insolvency of the corporation; and the government can not justly plead the insolvency of the corporation, caused by the losses which it is obligated to pay, as a ground or excuse for refusing to pay such losses.

II.

APPELLEE BECAME ESTOPPED TO MOVE FOR DISMISSAL FOR LACK OF JURISDICTION, AND WAIVED THE RIGHT TO OBJECT ON THAT GROUND.

1. *Since the court had the power to decide and did decide the question of its own jurisdiction, the Secretary of the Interior was bound by its acts of waiver and estoppel as to that question.*

The instant case does not involve a jurisdiction question in the sense of lack of power in the court to act. Process was duly and personally served upon the Secretary of the Interior, who personally appeared and answered, and the court had jurisdiction of the subject matter. As was said in *Munday v. Vail*, 34 N. J. L. 418, at page 422:

“Jurisdiction may be defined to be the right to adjudicate concerning the subject matter in the given case. To constitute this there are three essentials: First. The court must have cognizance of the class of cases to which

the one to be adjudged belongs. Second. The proper parties must be present. And, third. The point decided must be in substance and effect within the issue."

The court below decided that it had jurisdiction (R. p. 36); and the order vacating that decision had no more the effect of nullifying the Secretary's acts of waiver and estoppel than an appeal from a judgment entered on the decision would have had. Therefore on the appeal in the instant case the appellee's acts of waiver and estoppel are entitled to be given their full effect in accordance with the principles of the law of waiver and estoppel.

Lawrence Boom and Manufacturing Company v. Holt, 51 W. Va. 352; 41 S. E. 351.

Simmon v. Yoho (W. Va., 115 S. E. 851, 856).

2. *Appellee's acts of waiver and estoppel were not outside the scope of the authority of the government's agents nor opposed to the sanction of any law.*

In *Wilbert National Bank v. United States*, 294 U. S. 120 (1935), cited in appellee's brief, page 19, it was claimed by the assured under a government life insurance policy, that the government was estopped to deny liability because of lapse of the policy for default in payment of insurance premiums, on the ground that the Veteran's Bureau, the agent of the government, had failed to give notice of such default. The gov-

ernment denied liability on the ground that the alleged agreement under which the assumed claimed that the Bureau had failed to give due notice of default in payment of premiums, was beyond the scope of the agent's authority, and contrary to the insurance contract. The court, in holding that the government was not estopped to deny liability, says:

“Undoubtedly the general rule is that the United States are neither bound nor estopped by the acts of their officers and agents in entering into an agreement or arrangement to do or cause to be done what the law does not sanction or permit. Also those dealing with an agent of the United States must be held to have notice of the limitations of his authority. * * * The grounds upon which estoppel or waiver are usually predicated are not shown to exist. * * * When issuing a policy the Bureau, so far as known, did not ordinarily notify the assured of the allocation of cash payments; there was no custom to give notice of defaults.”

Obviously the general rule governing the Wilber case is not applicable to the instant case. In the instant case the motion to dismiss the petition, made at the trial (R. 36), in calling into exercise the power of the court to act, required the court to decide the question of its own jurisdiction; and the court having decided that question in the affirmative, and its subsequent order vacating that decision having been appealed from, the Secretary's acts of waiver and estoppel were not “what the law does not sanction or permit,” but were proper and legal acts.

The affirmative decision by the court below of the question of its jurisdiction (R. p. 36), depended upon and involved its decision of the question whether appellant's War Minerals Claim, as a gratuity based upon equitable and moral obligations, is a debt of the government having pecuniary value as property, in accordance with the principles established by the Supreme Court in *Work v. Rives*, 267, U. S. 175. *United States v. Realty Company*, 163 U. S. 427, 440, 441; *Allen v. Smith*, 173 U. S. 839, 402; *Williams v. Heard*, 140 U. S. 529, 539; *Parish v. Cortelyou*, 30 App. D. C. 45, 54; *Parish v. McVeagh*, 214 U. S. 124, 134; *Price v. Forrest*, 173 U. S. 410, 426, or a mere donation or gift, as claimed by the Secretary of the Interior after his aforesaid acts of waiver and estoppel

Since the trial court, before considering the merits of the case, was required to decide the above questions, the Secretary of the Interior was within his rights in adopting as his theory of the case, that the receiver, as an officer of the court and the legal representative of the corporation, had the right to bring and maintain this action; and his acts of waiver and estoppel were authorized acts and with the sanction of the law.

To create a waiver and an estoppel *in pais*, it is not necessary that the party pleading it should have a cause of action for damages resulting therefrom. *Beyer v. Le Fevre*, 186 U. S. 114, 118.

Waiver and estoppel is created where a party takes a position contrary to that previously assumed, to the prejudice of the person pleading the waiver and estoppel. *Davis v. Wakelee*, 156 U. S. 680, 689; *Moshier v. Frost*, 110 Ill. 206.

As a result of the acts of waiver and estoppel of appellee's predecessor in office (See appellant's brief, pp. 54-56), appellant was greatly prejudiced and sustained a loss of a substantial character. The position which appellee's predecessor in office assumed by adopting the theory of his case that the receiver, as an officer of the court, and legal representative of the corporation, had the right to bring and maintain this action, and his many acts of waiver and estoppel incidental to that theory (Appellant's brief, pp. 54-56), induced appellant to incur the expense of preparing for and trying said action on the merits, including the traveling expenses of a trip to Washington of appellant's counsel to attend the trial, and thereafter as a result of the act of appellee's predecessor in office in abandoning the theory of his case so assumed, and adopting a wholly inconsistent theory, appellant was led to incur the expense of preparing for hearing the former secretary's formal motion to amend the answer to suit his new theory of his case, and dismiss the petition, including the additional traveling expenses of counsel for appellant upon a trip to Washington to attend the hearing on said motion.

The motion of appellee to dismiss the petition was made orally at the trial upon the ground that the right to enforce the corporation's War Minerals Relief Claims did not pass to the receiver (R. pp. 36, 59, 60); and thereafter the same motion was made upon formal notice, together with motion to amend the answer only so far as required to make a basis for said motion to dismiss (R. p. 36).

In the statement at bottom of page 19 of appellant's brief, that the defenses in the amended answer "are not precluded by a former recognition * * * of appellant as a transferee of a War Minerals Relief claim, etc.", the words, "recognition of appellant * * * as tranferee of a War Minerals Relief claim, clearly comprise in their meaning appellee's acts of waiver and estoppel, and the word "precluded" obviously means estopped or precluded by waiver.

The argument of Appellee, at bottom of page 19 and top of page 20 of his brief, that by his acts of recognition of Appellant's right to maintain this action to collect his War Minerals Relief Claim, Appellee is not precluded by waiver and estoppel to assert the defense set forth in his amended answer, "if it is now held that such claims can not be transferred even by operation of law," is not convincing. It attempts to reach its conclusion by first assuming that conclusion as a part of the major premise; for to hold that such claims are incapable of being transferred would involve a holding that appellee is not precluded by his acts of waiver and estoppel.

Upon the grounds presented herein and in Appellant's original brief, and the authorities there cited, Appellant respectfully claims that the judgment appealed from should be reversed with directions that the Court below enter its decree herein upon and in accordance with its decree dated February 31, 1933.

Respectfully submitted,

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TRANSCRIPT OF RECORD

United States Court of Appeals for the District of Columbia

APRIL TERM, 1935

No. 6537

**NEAL CROWLEY, AS RECEIVER OF THE CUYUNA-
MINNEAPOLIS IRON COMPANY, A CORPORA-
TION, APPELLANT,**

vs.

**HAROLD L. ICKES, SECRETARY OF THE
INTERIOR.**

**APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF
COLUMBIA.**

FILED AUGUST 24, 1935.

PRINTED SEPTEMBER 27, 1935.

United States Court of Appeals for the District of Columbia

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United States Court of Appeals for the District of Columbia

No. 6537.

NEAL CROWLEY, as Receiver of the Cuyuna-Minneapolis
Iron Company, a Corporation, Appellant,

vs.

HAROLD L. ICKES, Secretary of the Interior.

a Supreme Court of the District of Columbia.

In Equity.

No. 50946.

NEAL CROWLEY, as Receiver of the Cuyuna-Minneapolis Iron
Company, a corporation, Plaintiff,

vs.

RAY LYMAN WILBUR, Secretary of the Interior, Respondent.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, That in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to-wit:

Filed February 11, 1930.

Supreme Court of the District of Columbia.

50946.

NEAL CROWLEY, as Receiver of the Cuyuna-Minneapolis Iron Company, a corporation, Plaintiff.

VS.

RAY LYMAN WILBUR, Secretary of the Interior, Respondent.

Petition for Review of the Decision of the Secretary of the Interior.

Neal Crowley, as Receiver of said Cuyuna Minneapolis Iron Company, for his petition herein, respectfully represents to the Court and alleges:

I. That this action is brought, and this petition filed and presented, to correct errors of law of the Secretary of the Interior in his final decision upon, and in the matter of, the claim of your petition filed with said Secretary by said Cuyuna Minneapolis Iron Company, under the act of Congress approved March 2, 1919 (40 Stat. 1272), entitled "An Act to provide relief in cases of contracts connected with the prosecution of the War, and other purposes", as amended; and that this action is so brought, and this petition so filed, under the Act of the 70th Congress of the United States approved February 13, 1929, to amend the said Act of March 2, 1919, above referred to.

II. That said Cuyuna Minneapolis Iron Company, and said petitioner, and each of them, are citizens of the State of Minnesota, said Company residing in Crow Wing County in said State of Minnesota and said petitioner in Hennepin County in said State. That at the time the errors of law in said final decision upon said claim were made, Albert Fall was the duly appointed and qualified and acting Secretary of the Interior, and that said errors of law were made by said Albert Fall as such Secretary in his final decision in the matter of said claim, as hereinafter enumerated and set forth.

That said Respondent, Ray Lyman Wilbur, as the successor of said Albert Fall, is now the duly appointed, qualified

and acting Secretary of the Interior; that he is a citizen of the United States; and that said Ray Lyman Wilbur, in his official capacity as Secretary of the Interior, is a resident of the District of Columbia.

III. That on the 20th day of March, 1916, said Cuyuna Minneapolis Iron Company became and now is a corporation duly organized and existing under and by virtue of the laws of the State of Minnesota; that the general nature of its business, as provided in its articles of incorporation, was and is, among other things, to operate and work lands for iron ore and all other minerals and to mine, wash, prepare, improve, smelt and work iron ore and all other minerals.

That the period of duration of said corporation is thirty years; that its principal place of business is Ironton, Crow Wing County, Minnesota; and that the only activities in which said Company ever engaged, and the only business it ever entered upon or carried on, consisted in acquiring mineral rights in the hereinafter described lands in Crow Wing County, Minnesota, by leases or option contracts, and producing, and preparing to produce, manganese or manganiferous iron ore therefrom as hereinafter more particularly set forth.

IV. That during the war of the United States and its Allies with the German Empire, said Cuyuna Minneapolis Iron Company suffered and sustained great losses and damage, as hereinafter set forth in producing, and preparing to produce, manganese, or manganiferous iron ore, in compliance with stimulation by, and the peremptory demand of, the authorized agents of the United States Gov-

3 ernment, by reason of which losses and damages said Company became wholly insolvent and failed in business, and a sequestration action was commenced, in the District Court of Crow Wing County, Minnesota, by Charles F. Horsford, Jr., a creditor of said Company, in his own behalf, and on behalf of all creditors of said Company, as plaintiff, against said Cuyuna Minneapolis Iron Company, as defendant, in which the Court, on the 1st day of December, 1921, duly made its order appointing Mal Clark receiver of said Company.

V. That said Mal Clark qualified and entered upon and continued in discharge of his duties as receiver of said Cuyuna Minneapolis Iron Company, until the time of his death which occurred about the month of January, 1929.

That on the 5th day of September, 1929, upon the proper application therefor, said District Court of Crow Wing County duly made its order, in said sequestration action, appointing said Neal Crowley, the above named plaintiff, as receiver of said Company in the place and stead of said Mal Clark, deceased. That said Neal Crowley immediately duly qualified and entered upon, and has ever been engaged in, the discharge of his duties as the receiver of said Cuyuna Minneapolis Iron Company, which is hereinafter referred to as said Company. That during the entire period of the existence of said Company as a going concern said Neal Crowley was its Secretary.

VI. That on or about the 1st day of June, 1916, said Company, through Franklin W. Merritt, President of said Company, acquired the mineral rights in, and an option for a mineral lease upon the South West Quarter (S. W. $\frac{1}{4}$) of Section Twenty-three (23), Township 47 North of Range 29 West, situated in said Crow Wing County, and known as the Mesaba Cuyuna property; that on the 23rd
4 day of December, 1916, said Company, through said Franklin W. Merritt, acquired the mineral rights in, and an option for a mineral lease upon, Lots 5 and 6 and the South East Quarter (S. E. $\frac{1}{4}$) of the South West Quarter (S. W. $\frac{1}{4}$) of said Section Twenty-three (23), known as the Whitmarsh property; and that the above described quarter sections form the eighty-acre tract which constituted the mining property of said Company which thereafter became known as the Ida Mae mine.

That on the 5th day of August, 1917, said Company obtained a lease upon said Mesaba-Cuyuna property, in accordance with the terms of its said option; that on the 15th day of December, 1917, said Company obtained a lease upon said Whitmarsh property according to the terms of its option; and that said above described property contained manganese or manganiferous iron ore, in commercial quantities.

VII. That it was the purpose of said Company in entering upon the developing of said property, and commencing the construction of said Ida Mae mine thereon, to limit the development and operation of said mine to obtaining enough profit therefrom to pay the costs of stripping the property for open pit mining, as shown by the affidavit of Franklin W. Merritt, President of said Company, made a part of, and

filed in, its War Minerals Claim, known as claim No. 1259, in which affidavit affiant stated that it had been his intention and the intention of the Company.

“to ultimately strip the property, and operate it as an open pit mine in order that production might be increased and the costs of mining reduced.”

VIII. That on or about the 16th day of April, 1917, in compliance with the general published appeal by the war time agencies of the Government, the proofs of which stimulation, appeal and response thereto have been duly filed with the Secretary of the Interior in the matter of said

5 Claim No. 1259, said Company changed its purpose and intention of completing said mine and operating the same for the limited purpose aforesaid, and entered upon the plan and purpose of completing the above-ground and under-ground development of said shaft upon the larger scale required to meet the needs of the Government to carry on the war, and so continued in the management of its mining business and operations, in the exercise of its own conservative business judgment, until March 22, 1918, when the Government, by its duly authorized agents, increased its stimulation and made an urgent and peremptory demand for greater preparation to produce, and for production on a larger scale and at whatever cost, under the threat to take over the property; and thereby virtually took control of the operations of the property as hereinafter more fully set forth.

IX. That the Department of the Interior gave claimant April 16, 1917, as its date of stimulation, which date was based upon the affidavit of said Franklin W. Merritt, President of said Company, in which he states that he read a number of published appeals, among which was the appeal by President Wilson, printed in the Pittsburgh papers, as follows:

“To the miner, let me say he stands where the farmer does; the work of the world waits on him. If he slackens or fails, armies and statesmen are helpless. He also is enlisted in the great service army.

(Signed)

WOODROW WILSON.”

The said date of stimulation was fixed by the report or finding of R. J. Malone, Examiner, filed in the matter of

said claim, the concluding words of which are as follows:

“The date of stimulation in this case is therefore changed from June 14, 1917, to April 16, 1917, the date on which deponent read this appeal.”

X. Early in the year 1918 it became necessary for the Government to employ every possible means to speed up the domestic production of manganese, especially high grade manganese which is necessary in the production of steel; and when the proposed bill for that purpose (40 Stat. 1009) was before Congress at a meeting of the Committee on Mines and Mining, House of Representatives, on March 26, 1918, to consider the proposed bill, testimony was given by George Otis Smith, Director of Geological Survey, and Mr. White, another authority on the subject, substantially as follows: That the high grade manganese, used in the metallurgy of steel, was being shipped to this country in large quantities from Brazil, and for that reason the procuring of manganese was an acute problem; that of the high grade ore this country, in 1917, imported at least five sixths of the high grade manganese, producing about 100,000 tons and importing 750,000 tons.

XI. And at the same hearing the Hon. Franklin K. Lane, Secretary of the Interior, after explaining how Mr. Callo-way, of LaGrange, Ga., had developed five mines in the South since the middle of 1917, made the following statement:

“That is the kind of thing that can be done throughout the United States, provided you can give some kind of guaranty that the man who develops these new properties which are in competition with the materials which come from abroad where there are larger deposits, provided that the man who develops the small deposit in the United States can be assured that he will get his money out of the investment that he puts into the development of these mines.

“You gentlemen are probably entirely familiar with the shipping situation. You know that this is about the hardest time that we will have to meet. We have made agreements with the nations on the other side of the water that they shall have a certain amount of food. Those agreements we have not been able to keep. They need food. The chief thing that stands against our full compliance with those contracts and the chief thing that stands against get-

ting in as great a force as we can get to France is the lack of ships.

7 "It therefore becomes necessary that every ton of ships that can be taken off the ocean carrying pyrite from Spain to the South Atlantic, or carrying manganese from Brazil, or carrying chrome from New Caledonia or South Africa, or carrying nitrates from Chile, should be used to help our Allies. Every single ton of this shipping is of vital need in the conduct of the war, so that in the development of these minor minerals you will be doing two things—you will meet the needs of the United States in the conduct of the war and you will develop the hidden resources of the country."

XII. That said increased stimulation and peremptory demand was made upon said Merritt Development Company and said Cuyuna Minneapolis Iron Company because it was absolutely necessary for the Government to obtain large quantities of domestic high grade manganese and thus release ship tonnage to carry troops and munitions of war to France; and accordingly, on the 16th day of March, 1918, Pope Yeatman, of the Raw Materials Division of the War Materials Board, by telegram called said Franklin W. Merritt to Washington to attend a conference of the producers of manganese ores with Mr. J. L. Replogle, of War Industries Board, and Messrs. Leith and Spurr, of the Shipping Board, to take place in Washington on March 22, 1918.

XIII. That proof of said increased stimulation and companies, in compliance with the request contained in said hereinbefore and hereinafter mentioned telegram, attended said conference with the representatives of the Industries Board and Shipping Board in Washington on March 22, 1918, at which conference said Boards as the war-time agents of the United States Government, through J. L. Replogle and Messrs. Leith and Spurr, the authorized and acting representatives of said Boards, peremptorily demanded that said companies increase their production, and make increased preparation for greater production, of manganese ore from their said properties, and that they employ every possible means within their power to secure a larger production of manganese ore from their said mining properties regardless of costs and whatever the result, and then stated that if said companies did

8

not comply with such demand and obtain results the Government would take over their properties.

XIII. That proof of said increased stimulation and peremptory demand is contained in the record of said Claim No. 1259, as shown by Question 8 of Questionnaire, and the answer thereto, which are as follows:

“Q. 8. Did the Government agencies, or any officers, agents or employees thereof request or demand that that claimant produced or prepare to produce any of the above named minerals?”

Ans. “Yes, * * * ” “Also Franklin W. Merritt who was in 1917, 1918, President of the Company, upon invitation of Pope Yeatman, attended a meeting of manganese producers held at the War Industries Board on Mar. 22, 1918, where Mr. Merritt was requested to speed up in the production of manganese, and Mr. Merritt promised to do so. A full statement of what occurred will be supplied with other proof later.”

The full statement here referred to is contained in Memo. 3 of said Question 8 of said Questionnaire, and is in part as follows:

“During the course of the meeting said Franklin W. Merritt was ordered to do everything within the power of the Company to produce every ton of manganese ore possible, regardless of costs or of consequences, and was informed that were not every effort exerted and results obtained that the Government would take over and operate the property itself.”

XIV. That further proof of said peremptory demand by the agencies of the Government, on March 22, 1918, and of the intensified operations caused thereby, resulting therefrom, is contained in an affidavit of Franklin W. Merritt, filed in the matter of said claim, and also in the said Government Report of R. J. Malone, Government Examiner of stimulation, filed in and made a part of the record of said claim, 1259, which report sets out said telegram and said affidavit of Franklin W. Merritt, and is in part as follows:

“One of the sources of the stimulation of claimant company, as appears from the affidavit for a hearing, originated

with and rests upon the receipt of the following telegrams by claimants and the intensified operations that resulted thereafter”:

Wash. D. C. 545 P. Mar. 16, 1918.

F. W. Merritt, 514 Plymouth Bldg. Minneapolis, Minn.

You are invited to attend a conference of producers of manganese ores with Mr. J. L. Replogle, of the War Industries Board, and Messrs. Leith and Spurr, of Shipping Board. Meeting to take place Friday afternoon, March twenty-second, at two-thirty, room seven sixteen National Defense Building, Eighteenth and D Streets, Washington.

POPE YEATMAN,

Raw Materials Division War Industries Board.

Minneapolis, Minn., March 16, 1918.

P. Yeatman Raw Materials Division,
War Industries Board,
Washington, D. C.

Myself and mines superintendent William Pascoe will meet with your board on the twenty-second instant as per your message.

FRANKLIN W. MERRITT.

“The affidavit recites that in attendance at this meeting he was informed of the shortage of ships for the importation of manganese, and that if domestic producers did not increase their production the Government would commandeer their properties.

“That upon his return to his property the claimant ‘without regard to costs or the violation of every known rule of mining methods,’ speeded up the workings, skimming the deposits, and, as a result, delivered from the properties of the Merritt Development Company and the Cuyuna Minneapolis Iron Co. approximately 83,000 tons of manganiferous ore running as high as 20% manganese.

“In a letter of April 17th, 1919, written by claimant to the Secretary of the Interior, he states that the Bureau of Mines requested the claimant company and Cuyuna-Minneapolis Iron Co. to get out at least 600,000 tons of manganiferous ore, and that the actual tonnage of this range was 700,000 tons.”

10 XV. That because of and in compliance with and obedience to said increased stimulation and peremptory demand of March 22, 1918, said Cuyuna Minneapolis Iron Company abandoned its conservative method of mining and managing its business, as theretofore conducted under said stimulation by published request, and, in subordinating and surrendering its own business judgment, to that of the agents of the Government, at great cost and expense of labor, skill and material, completed the sinking of said shaft of said Ida Mae mine and fully supplied said shaft and mine with machinery and all mining equipment, and ran drifts from said shaft to different parts of the ore bed and constructed the raises therein; and on November 11, 1918, said Company had blocked out and made ready for removal from the ground and delivery many thousand tons of high grade manganese ore, only 5,142 tons of which had been sold and delivered on November 11, 1918; all of which facts were admitted, as shown by the records and files of said claim.

That the Honorable John Briar, Assistant Commissioner, on the 4th page of his report upon said claim says:

“It is admitted that, on November 11, 1918, the claimant had a splendidly organized company, and was ready to deliver an immense amount of ore.”

XVI. That immediately after the termination of the War, on the 11th of November, 1918, the Government cancelled its said orders and demands for said ore and all ores, and refused to purchase or use any more manganese ore, and there was no market for said manganese ore which said company had produced, and prepared to produce, as aforesaid; and said Company was unable to sell or dispose of the large tonnage of ore developed under Government command and rendered available at a great expense for the use of the Government as aforesaid, or any part of it, or any ore, and as the direct result thereof, and of said peremptory demand, and of its compliance therewith, said Company lost its said mine, mining rights and leases and all the moneys expended by it in organizing and financing said Com-
11 pany, and acquiring said property and constructing, equipping and developing said mine, and the drifts and raises therein, and lost all of its machinery and equipment and all of its property, except the small amount sal-

vaged as hereinafter stated, to its injury and damage in the sum of \$358,193.70, as hereinafter more fully set forth.

XVII. That on or about the 12th day of December, 1921, said Company duly filed its said claim under said Act of March 2, 1919, as amended November 23, 1921, with the Secretary of the Interior, in the sum of \$358,193.70, for the net losses and damages suffered and sustained by said Company between the 16th day of April, 1917, and the 11th day of November, 1918, through, by reason of, and as the result of, the compliance of said Company with, and its obedience to, said increased stimulation and peremptory demand by the war-time agencies of the Government, a general itemized statement of which claim so filed, showing the amount of the award paid and the items of expenditures disallowed under erroneous rulings in the final decision of the Secretary of the Interior, is as follows, to-wit:

Expenditures.

Items of claim as filed, specified, tabulated and allowed	\$332,635.70
Items which were not clearly set forth but were included in the claim as filed and were proven and allowed	17,634.42
Items of claim as filed which were not clearly set forth but were included in the claim as filed and were proven but disallowed, to-wit:	
(1) Expenditures, prior to date of "Request" period referred to in Schedule A hereinafter set forth	24,344.54
(2) Expenditures in the stimulation period hereinafter referred to in Schedule B hereinafter set forth	54,604.36
	\$429,219.02

12 Deductions Admitted.

Ore sales	\$ 32,847.84
Ore on hand	9,592.55
Admitted salvage	15,127.12

Clerical error	3,032.14	
		\$ 90,345.41

Amount of claim exclusive of additional interest	\$368,619.37
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Amount of additional interest as set forth in Schedule D, paragraph XXVIII, p. XXXIII and XXXIV	4,447.21
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\$373,066.58

XVIII.

Items Disallowed.

Expenditures prior to date of "Request" period referred to in Schedule A hereinafter set forth.	\$ 24,344.54
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Expenditures in the stimulation pe- riod, in payment for the Mesaba- Cuyuna lease, Whitmarsh lease and drilling expenses, as herein- after set forth in said Schedule B.	54,604.36
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\$ 78,948.90

Expenditures in the stimulation pe- riod for organization and finan- cing and legal expenses, including commission on stock sales and revenue tax, as hereinafter more fully set forth in Schedule C in paragraph XXII hereof.	35,678.76
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Expenditures in the stimulation pe- riod in payment of royalties, in- terest, taxes and attorney's fees, as more fully set forth in Sched- ule D hereinafter set forth in paragraph XXIV of this peti- tion	40,371.53
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\$154,999.19

Excess salvage adjustment	29,872.88
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\$184,872.07

Additional interest after November 11th, 1918, upon the obligations which yielded said sum of \$1,357.41 in interest to that date.	1,324.69	
Additional interest on obligations incurred during stimulation and remaining unpaid, being obligations other than those which yielded said sum of \$1,357.41	3,122.52	
Amount now claimed	\$189,319.28	
Amount of award received	183,747.30	
		<u>\$375,066.58</u>

13 XIX. That between June 1, 1916, and April 16, 1917, and after said Company acquired said options upon, and the mineral rights in, the above tracts of land, said company did and performed upon said eighty-acre tract, in and as the commencement of the construction of the shaft of the said Ida Mae mine, the above mentioned development work at the cost and expenses above stated and which are more fully set forth in the following schedule entitle Schedule A, to-wit:

SCHEDULE A.

Drilling, between June 1, 1916, and Feb. 1, 1917	\$8,016.50	
Drilling between Feb. 1 and April 16, 1917	2,000.00	
		<u>\$10,016.50</u>
Machinery and mining Equipment between September 1, 1916, and Feb. 1, 1917	650.00	
Machinery and mining Equipment between February 1, 1917 and April 16, 1917	7,251.78	
		<u>7,901.78</u>
Payroll between February 1, 1917 and April 16, 1917		6,426.26
		<u>\$24,344.54</u>

That said costs and expenditures were a necessary part of the development and construction of said mine; that said amounts were actually paid by said defendant, and that

on the 16th day of April, 1917, the date of the Government stimulation by published appeal hereinbefore set forth, as the result of said drillings, development and equipment, and said partial construction of said Ida Mae mine, said property and mine was worth and of the reasonable value of the said sum of \$24,344.54, in addition to the cost and value of the said options, leases and mineral rights.

XX. That in compliance with said stimulation and peremptory demand, and for the purpose of retaining and holding said above properties for the uses of the Government under said option contracts and leases, said company, in accordance with the terms thereof, paid thereon the above-mentioned amounts which were necessary expenditures and are more fully set forth in the following schedule
14 entitled Schedule B, to-wit:

SCHEDULE B.

Upon and in accordance with the terms of said option contract for said Mesaba-Cuyuna lease, in the year ending December 31, 1917, as shown by the Government Auditors' Report, said Company paid the sum of	\$17,669.77	
Upon and in accordance with the terms of the same lease between December 31, 1917, and November 11, 1918, as shown by Ledger Account, said Company paid the sum of	8,076.00	
		\$25,745.77
Upon and in accordance with the terms of said option contract for said Whitmarsh lease, between February 1, and August 31, 1918, as shown by the Government Auditors' Report, said company paid the sum of		26,307.00
For drilling expenditures between June 1, 1917, and April 15, 1918, as shown by the Company's Ledger, said Company paid the sum of		2,551.59
		\$54,604.36

XXI. That prior to the consideration of said company's said claim by the Secretary of the Interior, and prior to the said recommendations of the Commissioner, said Secretary of the Interior made certain decisions for the determination not only of the claims in which such rulings were made, but for application generally to any and all claims thereafter to be heard, among which were the decision that losses generally known and designated as "property losses" and "interest losses" were not proper losses for allowance under said act; and said petitioner further alleges that these and other decisions and rulings, previously made as general rulings for guidance of the Department in all cases, entered into and became a part of the rulings of the Commissioner in his recommendations and the Secretary of the Interior in his final decision upon the said claim of said Cuyuna Minneapolis Iron Company.

15 XXII. That said prestimulation expenses of \$10,016.50 for drilling, \$7,901.78 for machinery and equipment, \$6,426.26 for payroll; and said post stimulation expenditures of \$25,745.77 for said Mesaba-Cuyuna lease, \$26,307.00 for said Whitmarsh lease, and \$2,551.59 for drilling, and each of said sums, and the value which they represent, entered into and formed a part of said Ida Mae mine; that said Company, in compliance with said peremptory demand, applied and expended said Ida Mae mine, and each of said sums, being parts thereof, as a property expenditure in producing and preparing to produce manganese or manganese ore, as aforesaid; that said company lost said mine, as aforesaid, and that as a result thereof suffered a net loss of said sums and amounts and each thereof.

That although the sum of the items making up the amount of \$17,634.42 in paragraph XVII of this petition does not appear in the tabulated statement of the claim as filed with the Secretary of the Interior, nevertheless those items were included in the statement of the claim, proven, admitted in audit, and allowed as a part of the amount awarded.

That although the sum of the items in Schedules A and B, making up the amount of \$78,948.90, in said paragraph XVIII, are not specifically set forth in the statement of said claim, they are all included as a part of said claim in and by the books of said company which were placed in the hands of the Government Auditor and thereby made a part of the record, and in and by questions and answers in said

questionnaire, and at the hearings were proven by said books and records of said company and admitted in audit by the Government Auditor Report, and disallowed in the report of the Commissioner and final decision of the Secretary of the Interior, under and in accordance with the erroneous rulings upon questions of law as hereinafter more fully set forth. That said books and records of the company, said questionnaire, auditor's report, and said report of commissioner are each and all hereby referred to and made a

part hereof, and your petitioner hereby asks leave to
16 make proof thereof and of each and all of the records referred to in this petition.

XXIII. That said losses set forth in said Schedules A and B in paragraphs XIX and XX were set forth by said company, in questions and answers numbered 5, 9, 10 (b), 13, 14, 14 (1), 14 (2), 14 (3), 15 and 23 of said questionnaire, in general terms and without specifying the several amounts but with an added allegation in said answers to the effect that the claimant would later make its statement of said losses more specific.

Question 14 of said Questionnaire, and the answer thereto are as follows:

"14. If claimant expended any money in the purchase of machinery, equipment, or appliance, state:

Ans. (1) "Yes. Details will be given with other proof later.

"15. Give an itemized statement of the date and amount of expenditures and obligations incurred for the development of, and for improvements on the property other than those specified in Question No. 14.

Ans. This information will be given later."

XXIV. That when claimant answered said questions in said Questionnaire he intended to make the statements in said answers regarding said losses more specific by stating the amount of each item thereof; but that he was prevented from doing so by the decision and ruling of the Secretary of the Interior that expenditures by a claimant in acquiring and developing his or its mining property are not proper losses for allowance under the said property loss rule; and said petitioner respectfully asks the Court that he be permitted to amend his statement of claim or the purpose of making said losses more specific as above set forth.

That said decision disallowing property losses, although originally made in earlier decided cases, was accepted and applied as a rule to govern the decision in all subsequent cases including said claim of the Cuyuna Minneapolis Iron Company; and that later, in the matter of the claim of the Merritt Development Company, when it was sought by the claimant to recover similar losses as capital expenditures, the Commissioner, in his report holding that the losses stood disallowed under said property loss decision and rule, said

17 “it is not the purpose to permit claimants or attorneys to get around the rule as to property loss.”

That said final decision of the Secretary of the Interior, in said Cuyuna Minneapolis Iron Company claim, consists of the said report of the Hon. John Briar, Commissioner, dated October 20, 1922, a true and correct copy of which is hereto attached marked Exhibit A and thus made a part hereof, together with the award by the Secretary of the Interior based thereon, signed by the Honorable E. C. Finney, First Assistant Secretary, dated October 21, 1922, a true and correct copy of which is hereto attached, marked Exhibit B and thus made a part hereof.

And your petitioner further alleges and claims that in his said final decision in the matter of said claim of said Company the Secretary of the Interior, in disallowing each of said items of net loss set forth in said Schedules A and B respectively, in paragraph XIX and XX of this petition, erred, as propositions of law, as hereinafter more fully set forth in the Fourth and Fifth Assignments of Errors respectively, in paragraph XXXVIII of this petition, and in the second, third and fourth paragraphs hereof.

XXV. That the mining operations of said Company, undertaken in compliance with and in obedience to said stimulation and peremptory demand of the war-time agent of the Government, were financed by the sale of its capital stock, the amount of which sales exceeded the sum of \$325,000.00; that the progress of the undertaking and the procuring of money to pay the necessary expenditures therefor were contingent upon the sale of said stock (see Report of Government Auditor, page 2); that said stock was sold by agents of said Company for a commission; that a large part of said stock was sold to stockholders residing in or near Pittsburgh, Pennsylvania, where said Company maintained an office for the sale of said stock; and that the expenditures for the organizing and financing of said

Company, including the sale of its stock and the expenses incidental thereto, were during the period of said increased stimulation by said peremptory demand and are set forth in the following schedule of Organization and Financing Expenditures entitled Schedule C, to-wit:

18

XXVI.

SCHEDULE C.

Bank Exchange	\$	74.96	
Miscellaneous expenses		218.78	
Miscellaneous expenses		347.91	
Bonding fees		110.00	
Pittsburgh office expenses		120.00	
Traveling expenses		40.70	
$\frac{2}{3}$ of exp. account of F. W. Merritt		1,947.24	
Recording fees		114.23	
Subscription to Chamber of Commerce		100.00	
Legal fees and expenses		1,210.36	
Engineer's report		522.33	
Half of following expenses:			
Western Union (Telegraph)	\$	75.31	
Printing and stationery		425.74	
Advertising and trade magazines ..		260.78	
Auto repairs and insurance		917.75	
Travel expenses		368.34	
		\$2,047.92	1,023.96
Telephone expenses			140.39
Postage			74.13
Salary at Pittsburgh office	\$3,292.00		
Half of Mr. Merritt's salary, re- garded as organization expenses ..		1,800.00	
One-third of Sec'y-Treasurer's and Bookkeeper's salary, regarded as or- ganization expenses		836.82	
			5,928.82
Rent			490.66
Revenue Tax			788.50
Commission on sale of stock			22,425.84
			\$35,678.76

19

XXVII. That said Organization and Financing Expenditures are set forth in detail on pages 31, 33,

36, 41 and 46 of the Government Auditor's Report; that said expenditures, and each item thereof, was a necessary expense and was actually and necessarily paid by said Company as an expense of organizing, financing and conducting said mining operation under said peremptory demand; that said Company suffered a net loss to the amount of each of said items; that each and every item of said expense was duly proven as a part of said claim, admitted in the Government Audit of the claim of said Company. and by the representatives of the Department of the Interior at the hearing on said claim, but was disallowed as propositions of law on the ground that they were not recoverable losses under said War Mineral Relief Act.

And your petitioner further alleges and claims that in his said final decision in the matter of said claim, said Secretary of the Interior, in disallowing each of said items of net loss set forth in said Schedule C, erred as herein-after more fully set forth in the Fifth Assignment of Error and also the Second, Third and Fourth Assignments of Errors in paragraph XXXVIII of this petition.

XXVIII. That between the 16th day of April, 1917, and the 11th day of November, 1918, said Company, acting in compliance with and in obedience to said stimulation and peremptory demand in preparing to produce and in blocking out and making available for the use of the Government the large ore tonnage hereinbefore mentioned, paid, or incurred as a part of the necessary costs and expenses therefor, the respective amounts for royalties, interest, taxes and attorney's fees set forth in the following schedule entitled Schedule D, to-wit:

20

SCHEDULE D.

Royalties	\$23,883.75
Interest	1,357.41
Taxes	10,130.37
Attorney's fees	5,000.00
Additional interest on the amounts of borrowed money which yielded the said sum of \$1,357.41, in interest to Nov. 11, 1918, being the sum of ..	1,324.69
Interest on amounts borrowed during the period of stimulation in addition to those which yielded said sum of \$1,357.41, being the sum of ..	3,122.52

That each and all of said items in Schedule D are for expenditures within the period of stimulation and were proven by the books and records of the Company; and each and all of them, except the items for additional interest, were admitted in and by the Government Audit, on pages 12-26, 29-46; and that each and all of said items were disallowed in the report of the Commissioner, and the final decision of the Secretary, by certain rulings upon questions of law which your petitioner claims and alleges were erroneous as hereinafter set forth in the Fifth Assignment of Error and the Second, Third and Fourth Assignments of Error in par. XXXVIII hereof.

XXIX. That by the terms of said options for leases and said leases upon its said mining property, said Company was required and obligated to pay, and did pay, for said mineral rights so-called minimum royalties upon a specified number of gross tons of ore not mined for each year, that the payment of said sum of \$23,883.75 as minimum royalties was a necessary expenditure in the production and preparation to produce said ores; that the total amount of the claim of said Company for such royalties, as set forth in its said claim statement, including the royalties on said 5,141 tons of mined ore, was \$26,217.88; that this entire sum of \$26,217.88 paid for royalties was admitted in the Government Audit, as shown on page 41 of the report of the Government Auditor; that \$2,334.13 of said sum was paid
21 as royalties on said mined ore, and was allowed as a recoverable loss and paid by the Government as a part of said award; but that said sum of \$23,883.75 was disallowed as not a recoverable loss under said Act of March 2, 1919.

And said plaintiff further alleges and claims that the Secretary of the Interior, in his said final decision disallowing said claim for said amounts paid as royalties, erred, as propositions of law, as hereinafter more fully set forth in the Fifth Assignment of Error and in the Second, Third and Fourth Assignments of Errors in paragraph XXXVIII in this petition.

XXX. In preparing to produce and in producing manganese ores from said mining properties, as aforesaid, in compliance with and in obedience to said stimulation and peremptory demand of the agencies of the Government, it was necessary, in carrying on, and as a part of, said undertaking, for said Company to employ the services of a law-

yer; that said Company did so employ the services of a lawyer and paid him therefor a reasonable fee of \$5,000; that said Company suffered a net loss of said sum of \$5,000.00, so paid for legal services in producing and preparing to produce said ores as aforesaid; that said item of loss was included in the said claim and admitted in audit by the Government Auditor but disallowed as a proposition of law on the ground that fees for legal services required in the production of ore are not a recoverable loss within the meaning of the act.

And plaintiff alleges and claims that the Secretary of the Interior in his said final decision disallowing said sum of \$5,000 paid for attorney's fees, erred as a proposition of law, as hereinafter more fully set forth in the first five Assignments of Error in paragraph XXXVIII of this petition.

22 XXXI. That between the 1st day of July, 1917, and the 11th day of November, 1918, said Company paid for the general taxes upon its said mining rights and leases the sum of \$10,130.37; that the said claim of said Company therefor was admitted in audit, by the Government Auditor, in his said Report at page 42, but was disallowed as a proposition of law on the alleged ground that the payment of taxes upon the mining property required for the production of ore is not an allowable loss within the meaning of the act.

And plaintiff alleges and claims that in its said final decision the Secretary of the Interior, in disallowing said Company's net loss of said amount paid for taxes, erred as propositions of law, as hereinafter more fully set forth in the Fifth Assignment of Errors and also in the Second, Third and Fourth Assignments of Errors in paragraphs XXXVIII of this petition.

XXXII. That on November 11, 1918, said claimant had paid the sum of \$1357.41 as interest to November 11, 1918, on money necessarily borrowed during said period of stimulation for use, and which was used, by said Company, in compliance with and in obedience to said stimulation and peremptory demand, in producing and preparing to produce said manganese ore for the use of said Government, as aforesaid; and upon which said claimant agreed and became obligated to pay interest; that said claimant's said claim for said sum of \$1,357.41 interest was duly filed and duly proven as a part of said claim and admitted in the

Government Audit of said claim at page 45 of the Report of Government Auditor, and disallowed under the erroneous decision and rule of the Secretary of the Interior regarding interest losses and property losses, referred to in paragraph XXI of this petition.

XXXIII. That a part of the borrowed money, upon which said sum of \$1,357.41 was paid, as aforesaid, has remained unpaid; that the additional interest thereon which has accrued since November 11, 1918, amounts to \$1,324.96; that your petitioner has been informed and believes that said decisions and rulings of the Secretary, that interest
23 paid on borrowed money is not an allowable loss, are erroneous and may be overruled by the Court; and that your petitioner respectfully asks that he be permitted to amend or supplement his statement of claim by supplemental claim statement setting forth said additional sum of \$1,324.86 for said interest which has accrued as hereinbefore set forth.

XXXIV. That in addition to the said sum of \$1,357.41, paid as interest on borrowed money, as aforesaid, and in addition to the additional interest stated in paragraph XXXIII, said claimant also paid and incurred obligations to pay large sums as interest on other and additional amounts of money borrowed during said period of increased stimulation, such additional interest amounting to the sum of \$3,122.52, to recover the loss of which said claimant filed its claim by statement in said Question and Answer No. 15 in said Questionnaire, hereinbefore referred to and set forth in paragraph XXII hereof; that the amounts of such interest is shown by the books of said Company which were placed in the hands of the Government Auditor for a more specific statement of said interest, and thus made a part of the record; that at the time of filing its said claim with the Secretary of the Interior, as aforesaid, said claimant intended to file a more specific statement of said interest paid on said additional sums of money borrowed, as aforesaid; but was hindered and prevented from so doing by said erroneous decisions and rulings of the Secretary of the Interior from which the law then afforded no appeal nor right of action for review; and your petitioner respectfully asks that he be permitted to amend his statement of claim by making the same more specific as to the amount of said interest paid on additional sums of borrowed money, as hereinbefore set forth.

That said Questionnaire and Question No. 15 thereof and the answer thereto, and the said books of the Company containing the record of said interest obligations and
24 each of them, are hereby referred to and made a part hereof; and your petitioner hereby asks that he be permitted to make profert of the same and each thereof.

And your petitioner alleges that said Company has no money or means with which to pay said additional interest upon said obligations incurred during the said period of increased stimulation and remaining unpaid, and that the amounts recovered herein for such additional interest will be applied in payment thereof to the persons or corporations to whom such interest is due; and that the Secretary, in disallowing each of said sums paid or incurred as interest, as aforesaid, erred as propositions of law, as hereinafter set forth in the Sixth Assignment of Error and the Second, Third, Fourth and Fifth Assignments set forth in the XXXVIII paragraph hereof.

(Paragraphs XXXV, XXXVI, XXXVII, being the last 17 lines of page 24 and all of pages 25 and 26 and first 4 lines of page 27, and Seventh sub-paragraph of paragraph XXXVIII, being the first 17 lines of page 29, and Exhibit C, being page 37, are to be omitted.)

25

Assignments of Errors.

XXXVIII. And your petitioner claims and alleges and hereby assigns as errors, that, in his final decision, the Secretary of the Interior erred, as conclusions of law as follows:

First. In disallowing each of claimant's hereinbefore mentioned items of net loss.

Second. That in his disallowance of each of said items of claimant's said net losses the Secretary erred in holding, as a proposition of law, that the 3rd and 4th provisos in Section 5 of the said Act of March 2, 1919, control the enacting clause of said Section 5 by limiting the application of the Act to certain classes of losses, to the exclusion of others, such classification having no legal or reasonable basis, and the effect of such construction of the statute being to defeat the manifest purpose of the Act.

Third. That in his disallowance of each of said items of claimant's said losses the Secretary erred in holding as

a proposition of law, in construing said statute, that property losses, so called, are not allowable losses within the meaning of said Act.

Fourth. That the Secretary of the Interior erred as propositions of law in disallowing claimant's said losses of pre-stimulation capital improvement expenditures for drillings to prove and labor and equipment partially to develop and equip said Ida Mae mine, which, as the embodiment and expression of said expenditures, was thereafter, in
26 compliance with stimulation, applied and expended by said Company in producing and preparing to produce manganese; and, in so disallowing said expenditures, said Secretary erred, as propositions of law, (a) in holding that the word "expenditures" in the 3rd proviso of said Section 5 is limited in its meaning to cash expenditures, and does not include the expenditures of property the equivalent of cash; and (b) that property losses are not allowable losses within the meaning of said Act. Par. XIX.

Fifth. That the Secretary of the Interior erred, as propositions of law, in disallowing each of claimant's said losses of expenditures, to-wit: \$6,210.36 for legal expenses, \$2,551.39 for drillings, \$35,678.76 for financing expenses, all of which were suffered during the period of stimulation in producing or preparing to produce manganese (see Schedules B, C and D, pp. 14, 18, 20 hereof), and in so disallowing said expenditures the Secretary of the Interior erred in construing said Act to empower said Secretary, in his discretion, to allow or disallow the net losses provided for in said Act, subject only to such self-imposed rules and regulations as the Secretary might from time to time make. P. XX, XXII, XXVII, XXVIII.

Sixth. That said Secretary of the Interior erred as propositions of law in disallowing each of claimant's said net losses of expenditures, to-wit: For Royalties, \$23,883.75; \$52,052.37 on contracts in acquiring leases; \$10,130.37 for taxes, and \$1357.41 for interest and \$4447.48 for additional interest (see pp. 20, 22-24 hereof), and in basing each of said losses on the ground that they were not operating expenses and in basing such disallowance, as to said sums of additional interest accruing after the armistice, on the ground that interest accruing after Nov. 11, 1918, is not an allowable loss, and in basing such disallowance as to all of said items of interest on the further alleged ground that

under the rule of public convenience, interest is not to be awarded against a sovereign government—it appearing that said claim is not for interest charged against the government, but for loss of expenditures for interest charged against claimant. P. XXXIII-XXXIV.

* * * * *

27 XXXIX. That under Section 3 of Article X of the Constitution of the State of Minnesota, the stockholders of all corporations—except those whose business as provided in its articles of incorporation is limited exclusively to manufacturing—are individually liable to creditors in an amount equal to the par value of their stock; that soon after the appointment of a receiver of said Company, the Court made an order assessing the stockholder of said Company upon their said individual liability; and that the liability of stockholders, and said war mineral relief claim hereinbefore set forth, were the only resource of said Company, or its creditors, for the payment of the said indebtedness of said Company.

28 XL. That a large part of the capital stock of said Company was owned by stockholders who were insolvent and unable to pay their liability; and, in order to avoid the expense of litigation in enforcing the stockholders liability, upon the application of said receiver and the stipulations of the creditors and stockholders, an order of the Court was duly made on the 28th day of December, 1922, authorizing the receiver to pay to each creditor 60% of the face of his claim, and to execute and deliver to each stockholder who should pay 40 per cent of the face amount of his stock liability a satisfaction in full of his liability under said order of assessment, without prejudice, however, to the right of each stockholder to a pro rata share of any assets that may remain in the hands of the receiver when the affairs of the Company are completely wound up, and without prejudice to the right of such stockholder to compel contribution from any and all stockholders who fail or refuse to pay to the receiver 40% of the par value of their stock.

XLI. That substantially all of the stockholders of said Company who were solvent entered into and signed said 40%-60% agreement to pay an amount equal to 40% of the par value of their stock, in consideration of the cove-

nants of said agreement on the part of the creditors to be performed, and in consideration of the provision of said agreement, as stated in the order of the Court authorizing and confirming the same, that payment of said amount equal to 40% of the par value of their stock, respectively, should be "without prejudice to the right of such stockholders to a pro rata share of any assets that may remain in the possession of the receiver when the affairs of the Company are wound up"; that the amounts so paid by stockholders of said Company exceed the total sum of \$300,000; and that said amounts were so paid by said stockholders pur-

29 suant to said agreement and in consideration of the above quoted provision therein, and in reliance thereon and upon the said order of the Court reciting, ratifying and confirming said agreement and said provision therein. That said order of the Court expressly provides that the payment by the stockholders of said 40% of their liability, as aforesaid, shall be "without prejudice to the right of each stockholder to a pro rata share of any assets that may remain in the hands of the receiver when the affairs of the Company are completely wound up." That it is the law in the State of Minnesota, as determined by the Court of last resort of that State, in construing said provision of the Constitution imposing said liability of stockholders, and the statutes of said State, that the assets of a corporation is the primary fund for the payment of corporate debts, and that said individual liability of stockholders as a fund for that purpose is secondary to the fund of or derived from the assets.

Wherefore your petitioner prays for the review by this Honorable Court of said final decision of the Secretary of the Interior upon the questions of law presented by this petition, and for the judgment of the Court ruling upon and determining said questions of law, and correcting said errors of law in said final decision, and decreeing that such judgment be certified to said Secretary of the Interior, and ordering and decreeing that said Secretary proceed to adjust the said claim set forth in said petition as determined by the Court in such judgment and decree, and that the claimant's statement of claim be amended as herein before set forth, and for such other, further or different relief as to the Court may be deemed just and proper. And said

30 petitioner further prays for the issuance of a sub-
pœna commanding the respondent to appear before
the Court on a date to be fixed and then and there
make answer to this petition.

JAMES E. TRASK,
Attorney for Petitioner.
FRANK HEALY,
Attorney for Petitioner.

31

EXHIBIT A.

Department of the Interior,
War Minerals Relief,
Washington.

Ira E. Robinson, Commissioner.
John Briar, Assistant Commissioner.

October 20, 1922.

Claim No. 1259.

Cuyuna-Minneapolis Iron Co.
Ironton, Minn.

Memorandum in Review of.

This is one of the two so-called "Merritt" claims, the other being the Merritt Development Company, No. 1237. Mr. F. W. Merritt was president of both companies. At first he refused to fill out questionnaires, but did so after the War Minerals Relief Act had been amended to embrace claims wherein the claimant had, within the prescribed time, given notice to the Commission in writing of intention to present a claim. Stimulation in this claim was from the same source and of the same date as in the Merritt Development Company claim, i. e., Mr. F. W. Merritt read the appeal to miners by President Wilson, on or about the 16th day of April, 1917. Production during the stimulation period was approximately 7,000 tons, some 5,000 tons of which were sold for about \$32,000.00, so that commercial importance is conceded.

In this claim, as in the Merritt Development Company, there was large expenditures, but unlike the latter there was no great production. The expenditures prior to stimulation were in organization, sale of stock and drilling to establish the character and quantity of the ore. Still earlier drillings had been made by others, at a cost of \$28,358.59, but a check upon the findings seemed necessary. The cost of the first drillings, \$28,358.59 was repaid by claimant by the terms of the lease, but the expenditure was not made a part of the claim. The expenditures after stimulation to June, 1918, were in great part for the sinking of a shaft, but considerable was spent in other development work and in equipping the property for production. Actual production began in July, 1918, and at the time of the armistice, over five thousand tons of ore had been taken out. Subsequent to the armistice, the president, Mr. F. W. Merritt, sold practically his entire holdings and one, W. H. Fetzer assumed control. Interested with him were citizens of Pennsylvania, who put money in the undertaking. The company failed to meet its minimum royalty payments to the lessor, the Whitmarsh Mining Company, and that company enforced the cancellation provision of the lease, and took possession of the property. Previously, other creditors had forced the company into receivership, and by agreement with the receiver, and upon order of the court, the entire property reverted to the Whitmarsh Mining Company, in consideration of the cancellation of the minimum royalties due, amounting to something over fifteen thousand dollars. The remaining obligations of claimant company aggregate \$494,000.00. Mr. Fetzer, for the company, has filed a claim here for \$258,300.08.

32 The government auditor and engineer visited this property a short time since. The audit of the expenditures and receipts was made in the office of the receiver, where the government auditor was furnished with all the records, and no difficulty was found in verifying the items. The Auditor's report is well set up, and the adjustment of the claim is a comparatively easy matter. From his report it is seen that, after deducting charges for items which are plainly unallowable, such as taxes, legal fees, interest, etc., the claim is reduced to the following:

Expenditures	\$271,187.69
Deductions:	
Ore Sales	\$32,847.84
Ore on hand Nov. 11, 1918, less roy- alty and handling.....	9,592.55
	42,440.39
Loss	228,747.30

These figures are subject to deduction for salvage on machinery and equipment. The price at which the property was turned back to the lessor, the Whitmarsh Mining Company, is not to be considered as in any way bearing upon the true salvage value, and claimant does not contend that it has such bearing. It is somewhat difficult to decide whether the *salvage* value or the *usable* value applies here, because the operations were continued after the armistice and, therefore, it was, viewed from that point alone, a going concern. It would not be fair, however, to deduct the full cost of machinery, equipment and improvements simply because the work did not stop on November 11, 1918, nor would it be fair, on the other hand, to place a junk value on this costly investment.

It is admitted that, on November 11, 1918, the company had a splendidly organized company, and was ready to deliver an immense amount of the ore which was needed. The demand for ore having practically disappeared, the attempt to continue operations was the claimant's own venture, of course, but is also true that the situation in which he found himself on November 11 was not altogether due to himself. It would seem under all the circumstances of this claim, that a point between cost price and junk value would be right. The machinery and equipment for the stimulated period cost \$70,506.93. Probably \$150,000.00 additional was spent in the sinking of the shaft, and in underground and surface improvements. Claimant holds the shaft to be a detriment rather than an asset, as mining in this locality in peace times to be profitable must be by open-pit instead of by underground workings. But engineers would disagree on this point, and the uneven formation of the ore in this mine might make the extraction of some of it by the shaft preferable if not a necessity. While, therefore, it is not the purpose to place anything like cost value on the shaft, *some* value must be given it and the

buildings and other improvements on the surface. The claimant fixes the salvage as a whole at \$30,000.00. The auditor feels that \$25,000.00 would be enough, but that claimant's own estimate should be accepted. The
33 chief engineer says that the value of the property would be \$45,000.00 if the company is to be regarded as a going concern on November 11, and in this view the auditor concurs. After a study of the items, my own conclusion is that a deduction of \$45,000.00 would be entirely fair to claimant. Deducting \$45,000.00 from the loss already shown, leaves a net loss of \$183,747.30 and for which an award should be made.

The auditor's report sets out the operations, the corrections and the additions and deductions in detail, and he provides an index by which any item or items and their treatment may be found.

In fixing this salvage, it must not be forgotten that the property is now being operated; and that while the operator may not expect immediately to get on a big paying basis, by reason of the contracts for sale of ore which he has made he nevertheless would not have undertaken to dewater the mine simply for the mine's own preservation. Having been allowed to fill long ago, it might remain so for further time without additional damage. And if his work was started for the purpose of meeting minimum royalties, it must then be accepted that at least cost of production is insured by the price he is receiving for the ore. It can hardly be doubted that he expects to bring this mine into large production. Otherwise, he would not be spending this money upon it. It is true that the claimant will not be the beneficiary, but it is also true that the losing of the property, after the armistice, was largely if not wholly due to claimant's bad judgment. Better management and larger vision would have enabled him to retain possession of the property, in which case he now would have valuable assets. For that reason, the government should not be asked to regard the property as of junk value on November 11. My own opinion is, and I have seen this mine as well as that of the Merritt Development Company, that they are among the best on the Cuyuna Range.

I recommend an award to claimant of \$183,747.30.

(Signed)

JOHN BRIAR,
Assistant Commissioner.

34

EXHIBIT B.

Department of the Interior.

Washington.

Oct. 21, 1922.

Claim No. 1259.

Manganese.

Notice in Writing—April 17, 1919.

On this date the Secretary of the Interior made an award, under section five of the Act of March 2, 1919 (40 Stat. 1274) as amended, of one hundred and eighty-three thousand, seven hundred and forty-seven dollars and thirty cents (-183,747.30) to the Cuyuna-Minneapolis Iron Company, whose post-office address is care of Manton M. Wyvell, Union Trust Building, Washington, D. C. and the same is hereby certified to the General Accounting Office, Interior Department Division, for payment.

The award is attached.

(Signed)

E. C. FINNEY,
First Assistant Secretary.

To the General Accounting Office,
Interior Department Division,
Ord-ance Building,
Washington, D. C.

35 STATE OF MINNESOTA,
County of Hennepin, ss:

Neal Crowley came before me personally and being first duly sworn deposes and says that he is the Receiver of the Cuyuna Minneapolis Iron Company, a corporation, and as such the Petitioner in the above entitled action; that he has read the foregoing petition and knows the contents thereof and that the same is true, except as to the matters therein stated on information and belief, and as to those matters that he believes it to be true.

NEAL CROWLEY.

Subscribed and sworn to before me this 31st day of December, 1929.

[NOTARIAL SEAL.]

JAMES E. TRASK,
Notary Public, — County, Minn.

My commission expires March 5, 1930.

36 *Respondent's Answer to the Petition.*

Filed June 10, 1930.

* * * * * * *

The respondent, Ray Lyman Wilbur, for answer to the petition in this case, says:

1-2. The respondent denies that any errors of law, as alleged in the first and second paragraphs of the petition, were committed by his predecessors in office in their administration of the Act of March 2, 1919, under which petitioner's War Minerals claim No. 1259 was considered.

3. The respondent admits the allegations of the third paragraph of the petition.

4. The respondent denies the allegation that the losses and damages as stated in paragraph 4 of the petition were due to the request and demand of any of the governmental agencies mentioned in the act.

5-6. The respondent admits the allegations of the fifth and sixth paragraphs of the petition.

7-8. Answering the allegations of the seventh and eighth paragraphs of the petition the respondent says that he has no knowledge of the allegations made therein and says, further, that same are immaterial to any issues in this case.

37 9-14. The respondent admits the allegations of paragraphs 9, 10, 11, 12, 13, and 14.

15. Answering the allegations of paragraph 15 of the petition, the respondent admits the allegations of the second subparagraph thereof and says that he has no knowledge of the allegations made in the first subparagraph thereof.

16. The respondent denies the allegations of the sixteenth paragraph of the petition.

17. Answering the allegations of the seventeenth paragraph of the petition the respondent admits that the said Cuyuna Minneapolis Iron Company filed its War Minerals

claim under the act of March 2, 1919, alleging losses suffered by reason of producing or preparing to produce manganese in compliance with the request or demand of one or more of the governmental agencies mentioned in the act, but denies that petitioner suffered net losses and damages as alleged within the purview of the law.

18. Answering the allegations of paragraph 18 of the petition, the respondent admits that certain items of alleged loss in petitioner's War Minerals claim were rejected and denied for the reason and on the ground that they did not and do not represent or constitute compensable losses within the purview of the law.

19-20. The respondent denies the allegations of paragraphs 19 and 20 of the petition.

21. Answering the allegations of paragraph 21 of the petition the respondent admits that items of expenditure for the purchase of property and items of interest on borrowed capital were rejected and denied on the ground that they did not and do not constitute or represent losses of the character intended by the law to be reimbursed.

22-29. The respondent denies the allegations of paragraphs 22 to 29 of the petition.

30. Answering the allegations of paragraph 30 of the petition, the respondent admits that an item of expenditure for attorney's fees was included in petitioner's War Minerals claim and that same was denied on the
38 ground that it did not and does not represent or constitute a compensable loss within the purview of the law.

31. The respondent denies the allegations of paragraph 31 of the petition.

32-34. Answering the allegations of paragraphs 32, 33, and 34 of the petition, the respondent admits that petitioner's War Minerals claim included items of expenditure for interest on borrowed capital. Respondent admits that said items of alleged loss were rejected and denied for the reason and on the ground that they did not and do not represent or constitute compensable losses within the purview of the law.

35, 36, and 37. Answering the allegations of these paragraphs, the respondent admits that in the final decision of

petitioner's War Minerals claim the Secretary deducted the sum of \$45,000 representing the value of the property from petitioner's ascertained net losses and says that the decision and action of the Secretary as aforesaid resulted from the determination by him of a question of fact; to wit, that the salvage value of said property was in the amount stated. The respondent further says that the Secretary's decision as aforesaid was final and conclusive and that it is not subject to review under the terms of the Act of February 13, 1929, pursuant to which this suit was filed.

38. The respondent denies that any errors of law were committed by his predecessors in office in the final decision of petitioner's War Minerals claim No. 1259 as alleged in paragraph 38 of the petition.

39, 40, and 41. Answering the allegations of paragraphs 39, 40, and 41, the respondent says he has no knowledge of the allegations made therein and says, further, that same are immaterial to any issues in this case.

Answering the entire petition the respondent says that the Secretary of the Interior then in office did render final decision adjusting and liquidating petitioner's War Minerals claim. The respondent says, furthermore, that the Secretary of the Interior then in office in the due and fair exercise of his official judgment and discretion under the authority reposed in him by the law "to make such
39 adjustments and payments in each case as he shall determine to be just and equitable" found and held that the items excluded from petitioner's claim did not and do not constitute or represent losses of the character intended by the law to be reimbursable.

Having fully answered the allegations of the petition the respondent asks to be hence dismissed with costs.

RAY LYMAN WILBUR,
Secretary of the Interior.

DISTRICT OF COLUMBIA, ss:

Ray Lyman Wilbur, being first duly sworn, on his oath says that he has read the foregoing answer by him subscribed, and knows the contents thereof, and that the matters therein stated of his own knowledge are true, and those stated on information and belief he believes to be true.

RAY LYMAN WILBUR.

Subscribed and sworn to before me this 7 day of June, 1930.

[NOTARIAL SEAL.] W. BERTRAND ACKER,
Notary Public in and for the District of Columbia.

E. C. FINNEY,
Solicitor, Department of the Interior,
O. H. GRAVES,
Assistant to the Solicitor,
Attorneys for the Respondent.

40 *Stipulation.*

Filed January 5, 1932.

* * * * *

It is hereby stipulated and agreed between the attorneys for the respective parties hereto that the records of the claim of said Cuyuna Minneapolis Iron Company filed in the office of the Secretary of the Interior as No. 1259 may be considered by the Court upon the trial of this case, and that such uncertified photostat or typewritten copies of said records or any part or parts thereof as the parties hereto, or either of them, shall then present to the Court and offer in evidence upon said trial may be considered by the Court in connection with this case with the same effect as originals, subject to the usual objection of incompetency, irrelevancy or immateriality, provided copies of portions of the record be exhibited to counsel for respondent, at least 20 days prior to date of trial.

Dated this 5th day of January, 1932.

JAMES E. TRASK,
FRANK HEALY,
Attorneys for Petitioner.
O. H. GRAVES,
Attorney for Respondent.

41 *Motion for Leave to File an Amended Answer.*

Filed December 23, 1932.

* * * * *

Comes now Ray Lyman Wilbur, the defendant in the above-entitled cause, by his attorneys of record, and moves

the court for leave to file his amended answer in this case, a copy of which is attached to this motion, in the place and stead of the original answer heretofore filed by him.

VICTOR H. WALLACE,
O. H. GRAVES,
Attorneys for the Defendant.

42

Memorandum.

Filed February 21, 1933.

* * * * *

The Cuyuna Minneapolis Iron Company, on December 12, 1921, in pursuance of the War Minerals Relief Act of March 2, 1919 (40 Stat. 1272), as amended November 23, 1921 (42 Stat. 322), filed with the Secretary of the Interior its amended claim in the sum of \$358,193.70 for net losses sustained in producing and preparing to produce manganese on an eighty-acre tract of land in Crow Wing County, Minnesota. The Secretary fixed the date of stimulation as April 16, 1917, and awarded the petitioner the sum of \$183,747.30. The petition for review of his decision was filed herein February 11, 1930, in pursuance of the amendatory Act of February 13, 1929 (45 Stat. 1166).

Proposed Amended Answer.

On the hearing, the respondent moved orally to dismiss the petition on the ground that the right to review is confined to the claimant itself and cannot be exercised by a receiver or other legal representative. Since the hearing, the respondent has formally moved for leave to amend the answer so as to present this objection of record, and
43 also to present as a bar to the review the defense of "account stated", based on the payment and acceptance of the amount of the award.

The contention that the right to petition for review is personal to the original claimant and is not assignable by operation of law or otherwise has been considered and rejected. In *Baker v. Wilbur*, Equity No. 50,764, and *Maltby v. Wilbur*, Equity No. 51,025, it was held that the right to petition for review passes to the executor or administrator, and in *Cuyuna, etc. Co., assignee v. Wilbur*, Equity No. 50,418, it was held that the right may also pass to a receiver.

The receiver in this case was appointed in a sequestration action in Minnesota brought to wind up the affairs of the corporation. (Mal Clark was appointed receiver December 1, 1921, but died in January, 1929, and was succeeded by the petitioner, Neal Crowley, who was appointed September 5, 1929.) As such receiver he has authority to "bring an action in his own name in any court having jurisdiction of the subject matter * * * in order to collect claims due to the corporation" (Hause, Receiver v. Newel, 60 Minn. 481, Sec. 6634, General Statutes of Minnesota, 1913); his right in such case being like the right of a trustee in bankruptcy to the assets of the bankrupt (Minn. Thresher Mfg. Co. v. Langdon, 44 Minn. 37, 39). The objection that the receiver may not maintain the petition for review is accordingly rejected.

Likewise, the suggestion that the petition should be dismissed because brought without permission of this Court being first obtained is considered untenable. The Secretary
44 apparently recognized the receiver in connection with the payment of the original award. At the time the petition was filed in this cause he made no objection, but answered on the merits, and also filed a stipulation that the Court might consider all or any part of the records of his office as evidence upon the trial of the cause. While the Court, in this situation, could stay the action if it appeared to have been brought unjustifiably, the mere fact of filing without leave should not avail the respondent by way of defense, where, as here, the Court has jurisdiction of the subject matter of the cause. See *Beyer v. Le Fevre*, 186 U. S. 114, 46 L. Ed. 1080; *Lansing v. Manton*, Fed. Cas. No. 8,077, and *Attorney General v. Booth & Co.*, 143 Mich. 89, 90.

As to the defense of "account stated", this rests on the allegation of payment in pursuance of an acceptance of the award, which was executed October 20, 1922, by Mal Clark, the original receiver, and Manton M. Wyvell, attorney for the claimant company before the War Minerals Relief Commission, and which reads as follows:

"We, Mal Clark, Receiver for the Cuyuna-Minneapolis Iron Company, and Manton M. Wyvell, attorney, hereby accept the award of \$183,747.30 recommended by you under this date and agree that the payment of said sum shall constitute and effect settlement of said claim (No. 1259), under

section five of the Act of March 2, 1919 (40 Stat. 1274) as amended.”

This defense has heretofore been considered and rejected on the ground that the amendment of February 13, 1929 (45 Stat. 1166), authorizing review by this Court, does not exclude from review cases in which awards have been made and paid, but extends the privilege to “any claimant who has heretofore filed” his claim with the Secretary under the provisions of the War Minerals Relief Act. See
45 Memoranda filed in *Morgan v. Wilbur*, Equity No. 50,893; *Arko Mining Co. v. Wilbur*, Equity No. 50,880; and *Joan Mining Co. v. Wilbur*, Equity No. 50,947.

The motion for leave to file the amended answer is accordingly denied.

As in *Joan Mining Co. v. Wilbur*, *supra*, this denial is not based on the exercise of discretion by the Court as to allowing or denying amendment at this stage, but is based solely on the conclusion that the facts alleged in the proposed amended answer do not constitute a bar to the petition for review of the final decision of the Secretary.

Matters Presented for Review.

The petition seeks to present for review questions of law involved in the Secretary's refusal to consider certain specific expenditures, viz:

(1) Pre-stimulation expenditures, tabulated in Schedule A, set out in paragraph XIX of the petition, including costs for drilling, labor and equipment by which the mine had been partially developed prior to April 16, 1917, the date of stimulation, aggregating \$24,344.54; and

(2) Expenditures during the period of stimulation, including; (a) expenditures tabulated in Schedule B, set out in paragraph XX of the petition, including the purchase of leases on mining property and expenditures for drilling, aggregating \$54,604.36; (b) other expenditures during the period of stimulation tabulated in Schedule D, set out in paragraph XXVIII of the petition, including royalties payable under the lease, \$23,883.75; taxes, \$10,130.37; attorneys' fees, \$5,000, and interest on money borrowed for
46 conduct of the business during the period of stimulation, aggregating up to November 11, 1918, \$5,814.62; and (c) expenditures tabulated in Schedule C, set

out in paragraph XXVI of the petition, for organizing and financing the company during the period of stimulation, aggregating \$35,678.76, the principal item of which is commissions on sale of stock, \$22,425.84.

The petitioner also complains of being charged with excessive salvage or usable value of property as of the date of the Armistice, November 11, 1918.

Preliminary to considering these items, it may be observed that the company was organized in March, 1916, and the only business in which it ever engaged was acquiring mineral rights and producing and preparing to produce manganese and manganiferous iron ore on eighty acres of land in Crow Wing County, Minnesota; that it had obtained, through its president, Franklin W. Merritt, in June and December, 1916, options for mineral leases upon said land; and that the pre-stimulation expenditures, set out in Schedule A, were incurred with a view to stripping the company deemed the only practical method of operation under ordinary conditions. After the date of stimulation, in response to the government's demand, the company undertook the completion of the development of the mine upon a much larger scale to meet the urgent needs of the government, and continued along this line until March 22, 1918, when, upon the urgent and peremptory demand of the government for greater production and under threat to take over the property, the company proceeded at a large

47 cost to complete the development of the mine, not in accordance with its original plans as an open pit mine, but as a fully equipped shaft mine with drifts to different parts of the ore bed and all necessary machinery and mining equipment, so that on November 11, 1918, it was ready to make delivery of immense amounts of ore, and had already removed and shipped several thousand tons.

It appears from the record that the mine was not a total loss at the time of the Armistice, but that the company under new management continued operations for some years thereafter. The receiver was appointed for the company on December 1, 1921, and the mine was actually being operated, presumably by a purchaser from the receiver, in 1922.

(1) As to the items of pre-stimulation expenditures listed in Schedule A, set out in Paragraph XIX of the petition,

it seems clear that these expenditures materially added to the value of the property, which, under stimulation, was devoted to government use. They represented part of the actual investment made by the mining company, and, as necessary and proper expenditures in preparing to produce manganese, are to be taken into consideration in making a true determination of the net losses which the company had sustained at the time of the Armistice. Here, after stimulation, the course of the operation which the company originally contemplated was changed. The initial private operation was transformed into the government enterprise. The weight to be given these expenditures is, of course, for the Secretary, but the expenditures are matters to
48 be considered by him in the light of all the circumstances, including the fact that this work was done prior to stimulation, and that the mining enterprise was continued after the Armistice.

The facts in this case, it is thought, distinguish it from both Joan Mining Co. v. Wilbur, Equity No. 50,947, and Arko Mining Co. v. Wilbur, Equity No. 50,880. In the first (Joan Mining Co.), as here, work was done before stimulation, and the enterprise was continued after the Armistice; but the lease of the property was taken before stimulation, and there was no finding that the continued development of the mine under stimulation was different from that which the mining company contemplated and was actually carrying on prior to stimulation. Here, there is evidence, and apparently recognition by the Secretary, that the character of the mine was so changed from the original plan that a practically new enterprise was brought into being. In the Arko Mining Co. case the Secretary found the mine was developed and constructed, not merely as a war enterprise, but the improvements were designed and constructed to be continued as a private enterprise; and the Secretary found that the expenditures, including the purchase of the option lease, were *of full cost value to the continuing enterprise*. Here it is conceded by the Secretary that the development was essentially a war enterprise, and that large expenditures, e. g., \$150,000 spent in sinking the shaft, were regarded as of comparatively little use for operation in peace times, or under normal conditions.

(2) (a) The expenditures in this group, set out in Schedule B of paragraph XX of the petition, incurred after

49 stimulation, were expenditures necessary to the continuance of the enterprise. It may be that regardless of stimulation the company might have gone forward and taken the leases under its option contract; but, under the company's theory, whatever might have been done independently of stimulation, the leases, like the pre-stimulation expenditures above mentioned, were devoted to the government enterprise and not to the enterprise as originally contemplated. These expenditures would seem, therefore, proper for consideration by the Secretary in the light of all the circumstances.

(2) (b) The items set out in Schedule D, paragraph XXVIII of the petition, all seem to be items for consideration in accordance with previous rulings.

The royalties were part of the price paid for the lease, which was taken after stimulation. (See *U. S. ex rel. Vindicator Consolidated Gold Mining Co. v. Wilbur*, 284 U. S. 231, and memoranda in *Gazzam v. Wilbur*, Equity No. 50,914, and *Cuyuna, etc., Co., assignee v. Wilbur*, Equity No. 50,418.)

Taxes and attorney fees were necessary expenditures. (*Wilbur v. U. S. ex rel. Chestatee Pyrites & Chemical Corp.*, — App. D. C. —, 60 W. L. R. 557; also memorandum in *Cuyuna etc. Co., assignee v. Wilbur*, supra, as to taxes; *Wilbur v. U. S. ex rel. Chestatee Pyrites & Chemical Corp.*, supra, and memoranda in *Green v. Wilbur*, Equity No. 50,887, *Stewart-Calvert Co. v. Wilbur*, Equity No. 50,817, and *Morgan v. Wilbur*, Equity No. 50,893 as to attorney's fees.)

Interest on money borrowed to carry on the business during the period of stimulation is to be considered in accordance with the rulings in *Wilbur v. U. S. ex rel. Vindicator Consolidated Gold Mining Co.*, supra, and
50 *U. S. ex rel. Chestatee Pyrites & Chemical Corp. v. Wilbur*, — App. D. C. —, 61 W. L. R. 36, decided December 12, 1932. (See also memoranda in *Joan Mining Co. v. Wilbur*, supra, *Morgan v. Wilbur*, supra, and *Cuyuna etc. Co., assignee v. Wilbur*, supra.) The record indicates that the company in making claim before the Secretary did not specify in detail the interest claimed, but there was apparently no controversy as to the amount thereof. The Questionnaire shows that claim for interest was distinctly made with proffer of details and proof thereof, and the

claim was disallowed because of the then standing ruling of the Secretary that the law did not permit such allowance. This is deemed sufficient to authorize review of the Secretary's decision under *Wilbur v. U. S. ex rel. Chestatee Pyrites & Chemical Corp.*, — U. S. —, decided by the Supreme Court of the United States January 16. 1933.

(2) (c) This group of expenditures, set out in Schedule C, paragraph XXVI of the petition, in addition to commissions paid on sale of stock of the company as the chief item therein, includes also expenses incident to the operation of an office at Pittsburgh, Pennsylvania, maintained for the purpose of selling stock. The total of the par value of the stock sold does not appear, but it is alleged that the amount of the sales exceeded the sum of \$325,000. In considering a similar ruling of the Secretary in *Southern Pyrites Ore Co. v. Wilbur*, Equity No. 50,881, it was observed:

“The Secretary refused to allow the item of \$38,462.50 which he dealt with as representing costs of financing the claimant's undertaking and made up of the aggregate of the discounts from the par value of stock sold and the commissions paid stock salesmen. He considered that
51 the difference between the par value and the amount received from the sales should not be treated as a net loss; because the stock was not necessarily worth its face value, but only what the corporation could realize for it; and the fact that the shareholder paid more than the corporation received did not necessarily imply that the corporation lost the difference, the situation being practically the same as if the corporation had sold its stock at the reduced price to a fiscal agent to sell to prospective shareholders at the higher price. As it is not clear that such disposition of the capital stock involves a loss to claimant within the meaning of the statute, the conclusion of the Secretary on this point will not be disturbed.”

The situation seems to be the same here, i. e., as if the company had sold the stock to be disposed of to an underwriter for \$35,678.76 less than the par value thereof. And, as in Equity No. 50,881, the refusal of the Secretary to consider these expenditures in determining net loss is held not to be erroneous.

As to Salvage Value.

The petitioner claims further error on the part of the Secretary in holding that the salvage or usable value of the property at the time of the Armistice was \$45,000. The report of Commissioner Briar (petitioner's Exhibit A) shows that there was considerable diversity of opinion on this subject. The petitioner's estimate was \$30,000, the Auditor's \$25,000, and the engineers' \$45,000. The conclusions of the Commissioner, who had examined the property and whose opinion as to value the Secretary approved, fixed the salvage or usable value at \$45,000. The fact that the company lost the property subsequent to the Armistice is by no means conclusive as to its value at the time of the

52 Armistice. It was the view of the Commissioner that the loss of the property after the Armistice was "due to claimant's bad judgment. Better management and larger vision would have enabled him to retain possession of the property, in which case he now would have valuable assets. For that reason the government should not be asked to regard the property as of junk value on November 11." (Petitioner's Exhibit A, p. 3.)

The salvage or usable value of the property at the time of the Armistice depended essentially upon questions of fact, and the record fails to show that the Secretary committed any error of law in his determination. (See *Arko Mining Co. v. Wilbur*, supra; *Joan Mining Co. v. Wilbur*, supra; *Stewart-Calvert Co. v. Wilbur*, supra, and *Cuyuna etc. Co., assignee v. Wilbur*, supra.)

Decree in accordance with this memorandum may be settled on notice.

JOSEPH W. COX,
Justice.

February 21, 1933.

53

Order of Substitution.

Filed June 13, 1933.

* * * * *

The above-entitled action having duly come on to be heard on the 12 day of June, 1933, upon the motion of the

above-named petitioner for an order substituting Harold Ickes, Secretary of the Interior, as respondent in the above entitled action in the place and stead of Ray Lyman Wilbur, resigned, James E. Trask and Frank Healy appearing as attorneys for the petitioner, and it appearing that notice of said motion has been duly served on the attorneys for respondent; and it further appearing that said Ray Lyman Wilbur, respondent above named, has resigned the office of Secretary of the Interior and that Harold Ickes has been duly appointed as Secretary of the Interior in his place and stead and his appointment duly ratified and confirmed:

Now, therefore, on motion of James E. Trask and Frank Healy, attorneys for petitioner, it is hereby ordered that Harold Ickes, Secretary of the Interior, be and he hereby is substituted as respondent in this action in the place and stead of said Ray Lyman Wilbur and that the title to said action, in all proceedings hereafter had herein, be so changed as to omit the name of Ray Lyman Wilbur, and insert in place thereof the name Harold Ickes as Secretary of the Interior, Respondent.

JAMES M. PROCTOR,
Justice.

I consent.

CHARLES FAHY,
Ass't to Solicitor,
Atty. for Respondent.

54

Petition for Rehearing.

Filed February 11, 1935.

* * * * *

Comes now the respondent in the above-entitled cause, by his attorneys undersigned, and moves the Court to grant respondent a rehearing upon the motion to dismiss the petition herein, which was made orally and argued at the hearing in said cause, and upon the motion for leave to amend the answer herein so as to include therein the objection made by said oral motion to dismiss, which said motion for leave to amend was denied by this Court in its memorandum opinion handed down February 21, 1933; this petition for rehearing being based upon the ground that, since the argument and the submission of the said above-

entitled cause and the decision of this Court herein, adverse to respondent's said motion to dismiss and said motion for leave to amend, a decision of the Court of Appeals of the District of Columbia, now the United States Court of Appeals for the District of Columbia, has been published, to wit, Ickes v. Cuyuna Mining and Investment Company (— App. D. C. —, 69 Fed. (2d) 662), decided February 19, 1934, petition for writ of certiorari denied October 8, 1934 (79 L. Ed. 92, 55 S. Ct. 73), wherein one of the
 55 principles announced, in the belief of your petitioner, would lead this court to grant said motion to dismiss, and/or said motion for leave to amend.

Wherefore, petitioner prays that a rehearing be granted.

HAROLD L. ICKES,

Secretary of the Interior,

By NATHAN R. MARGOLD,

Solicitor, Department of the Interior,

CHARLES FAHY,

First Assistant Solicitor,

Department of the Interior,

J. KENNARD CHEADLE,

Assistant Solicitor,

Department of the Interior,

WILLIAM H. ABBOTT,

Assistant Solicitor,

Department of the Interior,

Attorneys for the Respondent.

56 *Objection to Motion for Rehearing Upon Motion to Dismiss and Motion for Leave to Amend Answer.*

Filed March 8, 1935.

* * * * *

And now comes Neal Crowley as receiver of the Cuyuna Minneapolis Iron Company, the petitioner in the above entitled action, by his attorneys, and objects to the motion of respondent for rehearing upon his motion to dismiss the petition and for leave to amend his answer herein, upon the following grounds:

1. That the decision in Ickes v. Cuyuna Mining and Investment Company, — App. D. C. —, 69 Fed. (2d) 662, upon which said motion is based, is not applicable to the instant action.

2. That the decision in *Ickes v. Cuyuna Mining and Investment Company*, that no vested legal right of review of errors of law of the Secretary passed by the common law sale and assignment of the assets of the Northern Minnesota Ore Company by its receiver to the Cuyuna Mining and Investment Company, prior to the Act of Feb., 1929, has no application to the passing by succession of an insolvent claimant corporation's equitable right of review under said Act to the receiver of such corporation as its legal representative.

3. That the memorandum opinion of the Court in the instant action, upon which respondent asks for a rehearing, is not in conflict with the decision in *Ickes v. Cuyuna Mining and Investment Company*, — App. D. C. —, 69 Fed. (2d) 662, and is supported by the decisions of the Supreme Court holding that a claim against the government in the
57 nature of a bonus or gratuity, upon the death of an individual claimant, passes to his personal representatives.

4. That from the decisions of the Supreme Court that a claim in the nature of a bonus or gratuity, upon the death of an individual claimant, passes to his personal representatives, it necessarily follows that a claim of a claimant corporation, in the nature of a bonus or gratuity, upon the insolvency of the corporation, passes to the receiver of the corporation as its successor and legal representative.

5. That respondent by paying the partial award upon claim No. 1259 to the receiver and thereby treating the claim as filed by the Cuyuna Minneapolis Iron Company to the use of the receiver as its representative, and by admitting and alleging in its answer herein that the receiver of the corporation became invested with the title to the claim and the right to maintain this action, as the representative of the corporation, has waived and is estopped to set up as a defense that the claimant to whose use the claim was filed, and the claimant by and for whose benefit this action was brought, are not the same or that this action was brought by a claimant other than the claimant who filed the claim.

6. That respondent by averments and admissions in its answer to the petition herein, recognizing and admitting petitioner's ownership of and title to said claim, and his right to maintain this action, and by entering into and causing to be filed herein a written stipulation with petitioner for presenting evidence of the records of the claim No. 1259

at the trial of this action by typewritten copies thereof, and by entering into and filing herein a written stipulation with petitioner authorizing the Clerk of the Court to set this case for trial on the merits in April, 1934, upon issue joined upon the petition herein and said answer with said averments and admissions, caused petitioner to incur, and he did incur, the expense of preparing for the trial of and trying this action, on the merits, in reliance upon said averments and ad-

missions and the representations thus made that respondent recognized and admitted petitioner's title to said claim and his right to maintain this action; that petitioner in entering into said stipulation and preparing to try and in trying said action, acted as aforesaid in reliance upon said representations, believing them to be true; and that respondent thereby became and is estopped to set up as a defense that the title to said claim and the right to maintain this action did not pass by succession to said receiver as the representative of the corporation.

7. That respondent's predecessor in office, by paying said partial award of \$183,747.30 upon said Minerals Claim No. 1259 upon an acceptance which was executed on October 20, 1922, by said Mal Clark, as receiver of said corporation, and Manton M. Wyvell, attorney, caused said receiver to account, and he did account, for said sum of money received by him as receiver of said corporation, and out of money received by him as such receiver, to pay said Wyvell for his services in the matter of said claim as attorney for said receiver, in reliance upon the representations thus made that respondent and his predecessor in office recognized and admitted petitioner's title to said Minerals Relief Claim and his right to maintain this action; that petitioner in so receiving and accounting for said sum and paying for said services acted, as aforesaid, in reliance upon said representations, believing them to be true; and that respondent thereby waived and became and is estopped to set up as a defense that the title to said claim and the right to maintain this action did not pass by succession to said receiver as the representative of the corporation.

8. That the oral motion to amend, as made in open court, was expressly limited to proposed allegations to make the answer conform to the proof made; but that the averments and allegations of the proposed amended answer, denied in said memorandum opinion, contrary to the express terms

of said oral motion, seek by withdrawing paragraphs of the answer, which admitted paragraphs of the petition, and by proposed added allegations, excluded by the denial of said oral motion, to change the answer substantially, and
 59 to raise objections and issues and set out defenses which respondent has waived and is estopped to raise or set out and which would require the reopening of the case and the introduction of additional evidence.

9. That the motion for a rehearing of the motion to dismiss is invalid on the ground that it depends upon a motion to amend the answer to set up a defense which respondent has waived and is estopped to plead as a defense to this action.

Wherefore Neal Crowley, as Receiver, the petitioner in the above entitled action, prays that the relief asked in the petition of the respondent herein be in all things denied and his petition dismissed.

JAMES E. TRASK,
 FRANK HEALY,

Attorneys for said Receiver, the Petitioner in this action.

60 *Affidavit in Support of Objections to Motion for Rehearing.*

* * * * *

STATE OF MINNESOTA,
County of Ramsey, ss:

James E. Trask came before me personally and, being first duly sworn, deposes and says:

1. That he is one of the attorneys for the petitioner in the above entitled action, and that as such attorney he has had charge of said action on behalf of petitioner.

2. That in November, 1921, Charles F. Horsford, Jr., a creditor of said Cuyuna Minneapolis Iron Company, in his own behalf and in behalf of all creditors of said company, brought, in the District Court of Crow Wing County, Minnesota, a sequestration action against said Cuyuna Minneapolis Iron Company, under Section 8013 of Masons Minn. Statutes for 1927 (Sec. 6634, Gen. Statutes 1913), and on December 1, 1921, Mal Clark, petitioner's predecessor in office, was duly appointed receiver of said company, and he then duly qualified as such receiver.

3. That soon after the appointment of said Mal Clark as such receiver the court duly made an order requiring creditors to file their claims in said action, and pursuant to such order creditors of said corporation duly presented and filed their claims which were thereafter duly allowed to the amount approximately \$495,000.00.

4. On information and belief deponent alleges that the officers of the Cuyuna Minneapolis Iron Company, in verifying and filing said claim No. 1259, acted for and
61 under the direction of Mal Clark as receiver of said corporation; that said claim was filed as aforesaid to the use of Mal Clark as its receiver; that Manton M. Wyvell's services in the matter of preparing said claim for filing were rendered for and under employment by said receiver; and that said partial award was paid to said receiver upon an acceptance executed October 20th, 1922, as follows:

"We, Mal Clark, Receiver for the Minneapolis Iron Company, and Manton M. Wyvell, attorney, hereby accept the award of \$183,747.30, recommended by you under this date, and agree that the payment of said sum shall constitute and effect a settlement of said claim (No. 1259), under section five of the Act of March 2, 1919 (40 Stat. 1274) as amended." (Memorandum opinion, p. 3.)

5. That said award of \$183,747.30 was paid to said Mal Clark as receiver of said Cuyuna Minneapolis Iron Company, and credited in his account as receiver on October 27, 1922; that as such receiver he paid Manton M. Wyvell for his services as attorney in the matter of said government claim, and on October 30th, 1922, charged such payment in his said account as a disbursement of said receivership; all of which facts are shown by the account filed by said receiver in the said action in which he was appointed receiver, a true and correct certified copy of which account is hereto attached, marked Exhibit "A" and thus made a part hereof.

6. And on information and belief deponent alleges that, prior to the death of said Mal Clark, he, the said Mal Clark, as receiver of the Cuyuna Minneapolis Iron Company, entered into letter correspondence with his Washington correspondent in regard to the legislation then pending in Congress, which resulted in the Act of February 13, 1929,

and with view to bringing an action pursuant to such act in the event it became a law; and that after the death of said Mal Clark, and on the 5th day of September, 1929, upon the proper application therefor, Neal Crowley, the above named petitioner, was duly appointed receiver of said corporation, by an order of said District Court of Crow Wing County, a true and correct certified copy of which is hereto attached marked Exhibit "B" and thus made a part hereof.

62 7. That the petition in this action was duly filed and said action duly commenced on the 11th day of February, 1930; that thereafter, in response to the request of respondent's attorneys, deponent, as attorney for petitioner, gave the attorneys for respondent such indefinite extension of time as they might desire for filing and serving respondent's answer herein, taking into consideration their work in preparing and filing answers in a large number of similar actions; and that the attorneys for respondent, taking their own time and suiting their own convenience, delayed filing and serving respondent's answer in this action until on or about the 7th day of June, 1930.

8. That on or about the 5th day of January, 1932, Mr. O. H. Graves, one of the attorneys for respondent, and deponent had a conference for the purpose of arranging for an early date for the trial of said action and agreeing upon the manner of presenting the records as evidence upon the trial, which conference resulted in a stipulation, dated January 5, 1932, and now on file herein, providing that either party to said action may, at the trial thereof, present to the court typewritten or photostat copies of any of the records, or part or parts of any of the records in the office of the Secretary of the Interior in the matter of said claim, which either party might desire to offer in evidence, provided that copies thereof be served upon the opposite party at least twenty days before the day of trial. That in compliance with said stipulation deponent duly served typewritten copies of the said records introduced in evidence by petitioner at the trial of said action more than twenty days before the trial.

That on said 5th day of January, 1932, said attorney for respondent and deponent entered into a further stipulation, which is now on file herein, authorizing the clerk of said court to set said action for trial in April, 1932. That said

63 attorney for respondent did not at said conference on January 5, 1932, say anything about amending respondent's answer, or mention the matter in any way.

That said action was too far back on the calendar to be reached for trial in April, 1932, but was tried on the 21st and 23rd days of June, 1932.

9. That on the morning of June 21st, 1932, about 15 minutes before said action was called for trial, the attorneys for respondent for the first time informed deponent, who represented petitioner at said trial, that upon said case being called for trial they would object on the ground that the petitioner was without authority to maintain the action; and that upon said action being called the attorneys made such a motion, which was argued, submitted and overruled. That after said action had been tried and submitted respondent served a proposed amended answer and motion for leave to file it, which motion was argued, submitted and denied in said memorandum opinion filed February 21, 1933.

10. That the proposed amendments in said proposed amended answer—denied in said memorandum opinion—consist of a proposed additional paragraph numbered 42, tendering new issues which would require the reopening of said action, and the proposed striking from said answer of the whole of the first sub-paragraph of paragraph 41 of the answer containing admissions and allegations, the withdrawal of which would require the reopening of the action for additional evidence. That the said first sub-paragraph omitted in said proposed amended answer is as follows:

“Answering the entire petition the respondent says that the Secretary of the Interior then in office did render final decision adjusting and liquidating petitioner's War Minerals claim. The respondent says, furthermore, that the Secretary of the Interior then in office in the due and fair exercise of his official judgment and discretion under the authority reposed in by the law to make such adjustments and payments in each case as he shall determine to be just and equitable found and held that the items excluded from petitioner's claim did not and do not constitute or represent losses of the character intended by the law to be reimbursable.”

11. That respondent and his predecessors in office by
paying said partial award to said Mal Clark, the
64 former receiver of said company, and by express
allegations and admissions set forth in said sub-para-
graph 41, and like allegations elsewhere in said answer, ad-
mitting petitioner's ownership of said claim, and by enter-
ing into said written stipulations with petitioner as afore-
said, for presenting at the trial of said action the records
of said claim No. 1259, by typewritten copies thereof, and
by entering into said written stipulation with petitioner,
dated January 5th, 1932, for setting said action for trial on
the merits in April, 1932, represented that they recognized
and admitted petitioner's title to said War Minerals claim,
and plaintiff's right to maintain this action as the repre-
sentative of the corporation; the petitioner and his prede-
cessor in office, in entering into said stipulations and pre-
paring for the trial of and trying said action, and the con-
ducting of said receivership, relied upon said representa-
tions believing the same to be true; and that the respond-
ent herein has waived and is estopped to raise the objec-
tions that the title to said claim and the right to maintain
this action did not pass by succession to said receiver as
the representative of said corporation, and waived and is
estopped to raise the objection that the beneficial claimant
to whose use said claim was filed, and the claimant by and
for whom this action was brought, are not the same, or that
this action was brought by a claimant other than the claim-
ant who filed the claim.

That the written stipulations hereinbefore referred to in
Paragraph 8 of this affidavit, are on file in this action and
they are hereby referred to and made a part of this affi-
davit, as fully as though here set forth in full.

That deponent makes this affidavit on behalf of the peti-
tioner in the above entitled action and as his attorney.

JAMES E. TRASK.

Subscribed and sworn to before me this 5th day of March,
1935.

R. E. BARNACLE,
Notary Public, Ramsey County, Minn.

My commission expires 12-8-39.

65

EXHIBIT A.

District Court of, 15th Judicial District.

STATE OF MINNESOTA,

County of Crow Wing:

CHARLES F. HOSFORD, JR., Plaintiff,

VS.

CUYUNA MINNEAPOLIS IRON COMPANY, a Corporation,
Defendant.Account of Receiver Covering Period from December 1,
1921, to December 31, 1922.

“Exhibit A”

Itemized Statement of Receipts of Mal Clark, Receiver of
the Cuyuna Minneapolis Iron Company.1922, Oct. 27. United States Government—Government
Claim in full, \$183,747.30.

“Exhibit B”

Itemized Statement of Disbursements of Mal Clark, Re-
ceiver of Cuyuna Minneapolis Iron Company.1922, Oct. 30. Manton M. Wyvell, services as attorney in
re Government claim, \$91,873.65. Rectp. No. 48.

#10381.

66

District Court, 15th Judicial District

STATE OF MINNESOTA,

County of Crow Wing:

CHARLES F. HOSFORD, JR., Plaintiff,

VS.

CUYUNA MINNEAPOLIS IRON COMPANY, a Corporation,
Defendant.I, W. A. M. Johnstone, Clerk of the above named Court,
do hereby certify that I have compared the paper writing,

to which this certificate is attached, with the heading of the original account of Mal Clark as receiver of said defendant, covering period from December 1, 1921, to December 31, 1922, the headings of original Exhibits A and B of said account, the original entry in said Exhibit A of item in the name of the United States Government, under date of October 27, 1922, and the original entry in said Exhibit B of item in name of Manton M. Wyvell, under date of October 30, 1922, as the same appear of record and on file in said Clerk's office, at the Court House in said County, in the foregoing and above entitled cause, and that the same are true and correct copies of said originals and the whole thereof and of the whole of each thereof.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court at Brainerd, Minn., this 25th day of February, A. D. 1935.

[Seal Clerk of District Court.]

W. A. M. JOHNSTONE,
Clerk of District Court,
By NELLIE NYQUIST,
Deputy.

67

EXHIBIT B.

District Court, Fifteenth Judicial District.

STATE OF MINNESOTA,
County of Crow Wing:

CHARLES F. HOSFORD, JR., Plaintiff,

vs.

CUYUNA MINNEAPOLIS IRON COMPANY, a Corporation,
Defendant.

Order.

The above entitled action having come duly on for hearing before the undersigned, one of the Judges of said Court, on the 5th day of September, 1929, upon the petition of Lewis L. Drill, J. Adam Bede, and others, filed herewith, and it appearing to the court that Mal Clark, heretofore appointed receiver herein, has departed this life, that the receivership herein has not been closed, and that, under

the Act of Congress approved February, 1929, providing for actions in the Supreme Court of the District of Columbia against the Secretary of the Interior to review questions of law arising in his final decisions of War Mineral Relief Claims, said defendant has a claim against said Secretary to recover from the Government additional amounts for losses suffered by said defendant during the War in producing, and preparing to produce, manganese, and it further appearing to the satisfaction of the Court that it is for the best interests of the parties to this action, and all parties interested, that a receiver be appointed for said Cuyuna Minneapolis Iron Company; now, therefore, upon motion of James E. Trask, attorney for said petitioners, and upon all the papers, files and proceedings herein, it is hereby ordered, that Neal Crowley, of Minneapolis, Minnesota, be, and he hereby is appointed Receiver of said Cuyuna Minneapolis Iron Company herein in the place of said Mal Clark, deceased, and the bond of said new receiver is hereby fixed at \$2,500, which he is directed to have approved by the Court and filed herein before entering upon his duties as receiver.

Dated at Brainerd, Minn., this 5th day of September, 1929.

W. S. McCLENAHAN,
Judge of District Court.

68 District Court, 15th Judicial District.

STATE OF MINNESOTA,
County of Crow Wing:

CHARLES F. HOSFORD, JR., Plaintiff,

VS.

CUYUNA MINNEAPOLIS IRON COMPANY, a Corporation,
Defendant.

Clerk's Certificate.

I, W. A. M. Johnstone, Clerk of the above named Court, do hereby certify that I have compared the papers writing, to which this certificate is attached, with the original order as the same appears of record and on file in the said Clerk's office, at the Court house in said County, in the above entitled cause, and that the same is a true and correct copy of the same and the whole thereof.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court at Brainerd, Minn., this 25th day of February, A. D. 1935.

[Seal Clerk, District Court.]

W. A. M. JOHNSTONE,
Clerk of District Court,
By NELLIE NYQUIST,
Deputy.

69 *Memorandum Granting Rehearing and Dismissing
Original Petition.*

Filed April 19, 1935.

* * * * * * *

The respondent has petitioned for a rehearing on the ground that since the filing of the memorandum announcing the conclusion of the court in this cause the United States Circuit Court of Appeals has rendered a decision in Ickes v. Cuyuna Mining and Investment Company, — App. D. C. —, 69 Fed. (2) 662, which shows the conclusion reached by this court is erroneous.

In the case just mentioned, as in the case at bar, the receiver of a corporation was permitted by this court to maintain the suit for review which the corporation as claimant might have maintained under the War Minerals Relief Act as amended, had no receiver been appointed.

The question now presented has been fully argued orally and in briefs of counsel. Careful consideration of the arguments, as well as of the record and briefs filed in the Court of Appeals, has convinced me that the decision of that Court rests on the broad ground that claims under the War Minerals Relief Act may not be transferred by operation of law
70 and that the privilege of petitioning this court for
review is limited to the original claimant alone and
does not pass to the receiver of a corporate claimant.

The motion for a rehearing is accordingly granted. The memorandum opinion heretofore filed in this cause is set aside. And it is held, in conformity with the opinion of the Court of Appeals, that the original petition herein should be dismissed.

JOSEPH W. COX,
Justice.

April 18, 1935.

71 *Respondent's Amended Answer to the Petition.*

Filed June 4, 1935, as of February 21, 1933.

* * * * *

By leave of court first had and obtained, the respondent, Ray Lyman Wilbur, files this amended answer to the petition in this case.

* * * * *

(Note—Paragraphs 1-2 to 38 inclusive same as said numbered paragraphs in Original Answer.)

39, 40, and 41. Answering the allegations of paragraphs 39, 40, and 41, the respondent says he has no knowledge of the allegations made therein and says, further, that same are immaterial to any issues in this case.

42. Answering the entire petition, the respondent says that on December 1, 1921, Mal Clark was appointed receiver of the assets of the Cuyuna-Minneapolis Iron Company by a State court, to-wit, the District Court for Crow Wing County, Minnesota, pursuant to an action brought in that court against the corporation by one of its creditors. Clark's appointment did not in any way affect the corporate existence of the company, or divest its officers of their lawful authority.

On December 19, 1921, the Cuyuna-Minneapolis Iron Company, acting through its own officers, filed War Minerals claim No. 1259, with the War Minerals Relief Commission, pursuant to the provisions of section 5 of the Act of Congress of March 2, 1919, for losses alleged to have been sustained pursuant to the provisions of that act. Mal Clark did not join in this claim, nor was he authorized to do so by law.

Thereafter it was ascertained, as a matter of fact, that during the period covered by the War Minerals Act of March 2, 1919, the Cuyuna-Minneapolis Iron Company had produced and sold \$32,847.84 worth of ore from its mine, at an expense of \$216,595.14. The Commission accordingly recommended to the Secretary of the Interior that an award of \$183,747.30 be made to the company

on account of the net loss sustained by it, as aforesaid. The Cuyuna-Minneapolis Iron Company thereupon was duly notified of the War Minerals Relief Commission's finding and recommendation. On October 20, 1922, Mal Clark, the receiver appointed by the State court, and Manton M. Wyvell, the attorney of record for the company before the War Minerals Relief Commission and the Secretary of the Interior, joined in acceptance of the award recommended by the Commission, which read as follows:

"We, Mal Clark, Receiver for the Cuyuna-Minneapolis Iron Company, and Manton M. Wyvell, attorney, hereby accept the award of \$183,747.30 recommended by you under this date and agree that the payment of said sum shall constitute and effect settlement of said claim (No. 1259), under section five of the Act of March 2, 1919 (40 Stat., 1274) as amended."

Acting upon the faith of this acceptance of the War Minerals Relief Commission's recommendation, the Secretary of the Interior, through the First Assistant Secretary, made an award to the Cuyuna-Minneapolis Iron Company, on October 21, 1922, of \$183,747.30. The amount of this award was paid to the company pursuant to a voucher dated October 26, 1922, which was drawn in favor of "Cuyuna-Minneapolis Iron Company, c/o Manton M. Wyvell, Union Trust Building, Washington, D. C." The voucher did not mention Mal Clark, or recognize any right in him. The amount of the said payment actually was received and accepted by the Cuyuna-Minneapolis Iron Company, which, from the date of the payment to the present time, a period of more than nine years, remained silent and never has questioned that its War Minerals claim thereby finally was adjusted, liquidated and paid. On February 11, 1930, Neal Crowley, purporting to proceed under the authority of the Act of February 13, 1929, filed a petition in this case which states that Mal Clark died about January, 1929, and that he, the petitioner, had been appointed receiver of the

73 Cuyuna-Minneapolis Iron Company in the place and stead of Mal Clark by a decree of the District Court of Crow Wing County, Minnesota, dated September 5, 1929; and which prays a review of the final decision of the Secretary of the Interior upon certain alleged questions of law

said to have arisen out of the Secretary's adjustment of the War Minerals claim of the Cuyuna-Minneapolis Iron Company.

The respondent says that the petition fails to state a cause of action arising under the Act of February 13, 1929, pursuant to which it purports to have been filed.

Respondent says that the War Minerals claim of the Cuyuna-Minneapolis Iron Company was settled and paid in full on October 26, 1922, as aforesaid, and that the said claimant then received and accepted the sum of \$183,747.30, which was the amount it theretofore had agreed was due and payable to it under its said War Minerals claim. The respondent says further that as the claimant voluntarily accepted the award made to it by the Secretary of the Interior, no question of law arose in the payment of the claim, and that, therefore, no question remains for review under the Act of February 13, 1929.

The respondent says that the Act of February 13, 1929, provided only for proceedings by a claimant who had filed a claim pursuant to the provisions of the Act of March 2, 1919. The respondent says that the petitioner, Neal Crowley, filed no such claim, and, therefore, was not within the provisions of the act. Respondent says also that neither the War Minerals Act of March 2, 1919, nor the Act of February 13, 1929, conferred any right upon a War Minerals claimant which passed to its receiver. The respondent says that the awards provided for by the Act of March

2, 1919, were a gratuity voluntarily granted by Congress, and that, until their amounts actually were paid to the beneficiaries designated by Congress, they were not subject to claim by a receiver appointed by a State court. The respondent says further that the Act of February 13, 1929, conferred nothing more upon a War Minerals claimant than the right to ask a review by the Supreme Court of the District of Columbia of questions of law which had arisen in the adjustment, liquidation and payment of his claim. This right, by express provision of law, was confined to War Minerals claimants themselves, and its exercise was limited to one year from February 13, 1929. The respondent says that the right, conferred as aforesaid, was not a property right to which a

receiver could lay claim, or which a receiver could exercise.

The respondent says that as the Cuyuna-Minneapolis Iron Company was satisfied with the sum of \$183,747.30, which was paid to it by the Secretary of the Interior, as aforesaid, it filed no proceeding under the Act of February 13, 1929, and that as the right to file such a proceeding ceased to exist at February 13, 1930, there now is nothing before the court with respect to the War Minerals claim of that company.

The respondent says further that the Act of February 13, 1929, conferred no jurisdiction upon this court to entertain a proceeding instituted by the receiver of a War Minerals claimant, and that this suit, therefore, is beyond the jurisdiction of this court to hear and determine. Respondent says that a foreign receiver has no right to institute an original suit in the Supreme Court of the District of Columbia without leave of that court first had and obtained, and that no such leave was obtained by Crowley in the instant case. Respondent also says that, in any event, Crowley, as the successor in office of Mal Clark, is estopped by Clark's acceptance of the award and payment made to the Cuyuna-Minneapolis Iron Company, as herein-
75 before set forth.

The respondent claims the benefit of all the foregoing points of law as a defense to the petition in this case, to the same extent as though they had been raised by plea or demurrer.

Having fully answered the allegations of the petition, the respondent asks to be hence dismissed, with costs.

RAY LYMAN WILBUR,
Secretary of the Interior.

DISTRICT OF COLUMBIA, ss:

Ray Lyman Wilbur, being first duly sworn on his oath, says that he has read the foregoing answer by him subscribed and knows the contents thereof, and that the matters therein stated of his own knowledge are true, and those stated on information and belief he believes to be true.

RAY LYMAN WILBUR.

Subscribed and sworn to before me this 5 day of December, 1932.

[NOTARIAL SEAL.]

W. BERTRAND ACKER,
*Notary Public in and for the
District of Columbia.*

E. C. FINNEY,
Solicitor, Department of the Interior,
O. H. GRAVES,
*Assistant to the Solicitor,
Attorneys for the Respondent.*

Let this amended answer be filed.

JOSEPH W. COX,
Justice.

76

Final Order.

Filed June 4, 1935.

* * * * *

This cause coming on to be further heard, after the filing herein on February 21, 1933, of the Court's memorandum opinion *inter alia* denying respondent leave to file an amended answer, upon respondent's petition for a rehearing upon the ground that the disposition of this cause is controlled by the decision of the United States Court of Appeals for the District of Columbia in *Ickes v. Cuyuna Mining and Investment Company* (63 App. D. C. 91, 69 Fed. (2d) 662; petition for writ of certiorari denied 293 U. S. 562), handed down on February 19, 1934; and said further hearing also being considered by the Court and the parties hereto, by their respective attorneys, as a hearing upon the petition and the proposed amended answer; and the parties hereto having appeared in open court by their respective attorneys and the arguments of said attorneys having been heard, the matter having been submitted and taken under advisement by the Court, and the same having been carefully considered, the Court being fully advised in the premises; it is hereby ordered, adjudged and decreed this 4th day of June, 1935:

1. That the petition for rehearing be and the same hereby is granted;

2. That the memorandum opinion heretofore filed
77 herein on the 21st day of February, 1933, be and the
same hereby is set aside;

3. That the respondent be and he hereby is given leave
to file his amended answer *nunc pro tunc* as of the 21st day
of Febraury, 1933;

4. That the petition of Neal Crowley, as receiver of the
Cuyuna-Minneapolis Iron Company, be and the same hereby
is dismissed.

Wherefore it is considered that the petitioner take noth-
ing by this suit, and the defendant go hence without day, be
for nothing held and the costs of this suit be taxed by the
Clerk against the petitioner.

JOSEPH W. COX,
Justice.

From the foregoing order the petitioner by his attorney
of record in open court notes an appeal to the United States
Court of Appeals for the District of Columbia; whereupon
an undertaking to act as a cost bond is hereby fixed in the
sum of one hundred dollars (\$100) with leave to deposit
fifty dollars (\$50) cash with the Clerk of the Court in lieu
thereof.

JOSEPH W. COX,
Justice.

No objection as to form.

_____,
Attorney for the Petitioner.

78 *Memorandum.*

June 15, 1935.—\$50 deposited by James E. Trask in lieu
of bond on appeal.

79 *Assignment of Errors.*

Filed June 15, 1935.

* * * * *

The appellant assigns the following errors:

The Court, in granting the motion for a rehearing and
setting aside its Memorandum Opinion, filed February 21,
1933, and dismissing the original petition, and in pronounc-
ing the decree appealed from, erred as follows:

1. In holding that the War Minerals Relief Claims are mere gratuities, and in not holding that they are gratuities based upon equitable and moral considerations importing a moral obligation of the Government to pay them.

2. In holding that the War Minerals Relief Claims have no pecuniary value and do not constitute property.

3. In not holding that petitioner's claim, based upon the stimulation of the Government's peremptory demand of March 22, 1918, enforced by a threat (petition, par. XIII, R. p. —), was in effect an impressment, and placed upon the Government a legal obligation as well as a moral obligation to pay the same.

4. In holding that the right to collect payment of and enforce said claim did not pass to the receiver, as an officer of the Court and representative of the corporation and its stockholders.

5. In not holding upon the facts as shown by the record (Memorandum Opinion, Feb., 1933, p. 3, R. pp. —) that the Secretary of the Interior, by payment of the award
80 upon petitioner's claim to, and upon an acceptance signed by, the receiver, and by other acts of waiver and estoppel, has waived the right to claim, and become estopped to assert, that the right to collect payment of and enforce said claim did not pass to the receiver as an officer of the Court and representative of the corporation and its stockholders.

6. In holding, in construing the Act of March 2, 1919, as amended, that the grant of the War Minerals Relief to corporations is limited to solvent corporations.

7. In not holding that the word corporation as used in the act means or connotes its members or stockholders as the real beneficiaries, and that in the case of its insolvency a corporation continues to exist until, in the winding up proceedings, its War Minerals Claim is collected, and by order of the Court paid to the stockholders in the right of the corporation.

8. In holding that errors of law in the final decision of the Secretary in the claim of a corporate claimant filed with the Secretary in the name of the corporation after its insolvency and the appointment of a receiver, can not be reviewed by a petition for review filed by such receiver, as an officer of the Court, in the right of the corporation and as its representative.

9. In holding that the corporation, by and in whose name the claim in the instant case was filed after its insolvency and the appointment of the receiver, and said receiver, bringing the action for review in the right of the corporation, as an officer of the Court and representative of the corporation and its stockholders, are not the same claimant within the meaning of the Act of 1929.

81 10. In holding that because prior to the Act of 1929, petitioner's said claim could not be enforced in any Court, it was therefore incapable of passing to the receiver, as an officer of the Court for the benefit of the corporation, its stockholders and creditors, and of being enforced by an action for review under the Act of 1929 providing such action as a remedy for its enforcement.

11. In holding that the instance case is ruled by the decision in 63 App. D. C. 91, 69 Fed. (2nd) 662, in which the Cuyuna Mining and Investment Company filed petition for review, claiming title to the right of review of the Northern Minnesota Ore Company, an insolvent corporate claimant, through a sale of the assets of the Ore Company made by its receiver, before the Act of 1929 had been passed, and made without any mention of any right of review, without any equitable assignment of any inchoate right of review and without any allegation or proof of the payment of any consideration for an assignment of any right of review.

12. In holding that the word corporation, as used in the War Minerals Relief Act, as amended, is limited in its meaning to its juristic being, which exists only by fiction of law, to the exclusion of its stockholders, who, in the last analysis, constitute the corporation.

13. In holding that the insolvency of a corporate claimant, caused by losses compensable under the Act, can justly be made the ground or excuse for not paying such losses.

JAMES E. TRASK,
FRANK HEALY,
Attorneys for Petitioner.

82

Acknowledgment of Service.

Filed July 20, 1935.

* * * * *

Notice is hereby accepted and admitted of the application for and allowance of the appeal herein of Neal Crow-

ley, as Receiver of the Cuyuna-Mineapolis Iron Company, and deposit on June 15, 1935, of \$50.00 in lieu of bond of appeal. Receipt is also hereby acknowledged of a copy of appellant's assignment of errors filed herein June 15, 1935, and of his designation of record on appeal.

NATHAN R. MARGOLD,

Attorney for Harold L. Ickes, Secretary of the Interior.

83 *Stipulation as to the Statement of Evidence.*

Filed July 20, 1935.

* * * * * *

It is stipulated and agreed by and between James E. Trask, attorney for Neal Crowley as Receiver of the Cuyuna-Minneapolis Iron Company, and Nathan R. Margold, attorney for Harold L. Ickes, Secretary of the Interior, that true copies and excerpts from the following papers were submitted in evidence in behalf of Neal Crowley, receiver of the Cuyuna-Minneapolis Iron Company, at the hearing of this cause before Justice Cox, and were duly considered by him, to-wit:

1. Excerpts from the original claim and questionnaire of the Cuyuna-Minneapolis Iron Company.
2. Excerpts from the Auditor's report in said claim.
3. The report of War Minerals Relief Commissioner Briar.
4. The certificate of award to the Cuyuna-Minneapolis Iron Company.

It is further stipulated and agreed that these papers, in the condensed form given below, shall constitute a part of the record on appeal in this case, and that they may be considered by the Court of Appeals with the same effect as though they were embodied in a formal statement of evidence in equity, pursuant to law rule 46 of the Supreme Court of the District of Columbia, and rule 5 of the Court of Appeals, and that this stipulation may be printed in the record as though it were a formal statement of evidence under the rules.

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The papers designated are in substance as follows:

1. The original claim and questionnaire was filed by and in the name of Cuyuna-Minneapolis Iron Company, a

Minnesota corporation, and was signed and verified by William H. Fetzner, president of the company.

2. Excerpts from the auditor's report:

"In accordance with instructions I have audited the accounts and the claim of the Cuyuna-Minneapolis Iron Company in receivership.

"The examination was made at Brainerd, Minnesota, at the office of Mal. Clark, Esq., the duly appointed receiver of the affairs of the Company. At Minneapolis, Minnesota, additional information was received from Neal Crowley and Franklin W. Merritt, Secretary-Treasurer and President, respectively, of the company in 1917-18. Audit Examination was made during July of this year.

"History and Organization

"The Cuyuna-Minneapolis Iron Company originated at a meeting of incorporators held March 27, 1916, at Minneapolis, Minn. One million dollars capital stock was authorized in 100 shares. On April 5, 1916, Franklin W. Merritt, the holder of options on certain lands agreed to convey the same to the newly formed company for \$50,000 in deferred cash payments and the issuance to him of all of the capital stock of the corporation. It was further agreed that of the stock turned over, Merritt would redeliver back to the corporation 549,997 shares of the said stock "for the purpose of enabling the corporation to have on hand stock for sale in financing the corporation". This stock was subsequently sold at varying discounts.

"Cash receipts and disbursements for the period April 8, 1916, to February, 1917, totaled some \$30,000, of which approximately \$20,000 was used to drill and develop the property.

"For the year 1917 \$146,546.33 was expended. For the year 1918, \$297,497.69 was used up.

"The undertaking was financed from sale of treasury stock and bonds. Expenditure from time to time was contingent on the sale of stock.

"The expenditure on the property until June, 1918, was solely for shaft-sinking, other development work on the property, and for the purpose of equipping the property for production.

85 “In July, 1918, ore was produced. By November 11, 1918, the Armistice date, the company had a thoroughly organized property. In April, 1919, Mr. Franklin Merritt, having sold his stock, handed the reins of control to one W. H. Fetzner, who had invested some \$60,000 in the enterprise. Fetzner represented Pittsburgh, Pennsylvania, and Butler Pennsylvania, interests. The Pennsylvania people had been gradually acquiring stock in the undertaking throughout the year 1918 and had arranged an issue of bonds to the value of \$150,000 to further their enterprise.

“Late in 1921 the company was forced into receivership, being at the time indebted to various creditors in an amount aggregating Four Hundred Ninety-five Thousand Dollars (\$495,000.00). The Whitmarsh Mining Company, Lessors, resumed the property.”

3. The report of the Commissioner and the certificate of award are attached to the petition filed in this court as “Exhibits A and B”, respectively, and will appear in the record as part of the petition.

JAMES E. TRASK,

Attorney for Petitioner.

NATHAN R. MARGOLD,

Solicitor, Department of the Interior,

Attorney for Respondent.

86 *Designation of the Record on Appeal.*

Filed June 28, 1935.

* * * * *

The Clerk will please prepare the transcript of record for the appeal of Neal Crowley, as receiver of the Cuyuna-Minneapolis Iron Company, including therein the following records:

1. Petition for review, except paragraphs XXXV, XXXVI, XXXVII, seventh sub-paragraph of paragraph XXXVIII, and Exhibit C attached to said petition; which parts, embraced in this exception, to-wit, paragraphs XXXV, XXXVI, XXXVII, seventh sub-paragraph of paragraph XXXVIII, and Exhibit C, are to be omitted.

2. Respondent's Answer to Petition.

3. Stipulation of counsel as to Statement of Evidence.

4. Stipulation of counsel dated January 5, 1932, providing that uncertified typewritten copies of Claim No. 1237 may be considered by the Court at the trial.

5. Memorandum Opinion of Justice Cox, dated Feb. 21, 1933.

6. Petition of respondent for rehearing, omitting points and authorities attached thereto.

7. Petitioner's objections and Answer thereto filed in March, 1935.

8. Affidavit, dated March 8, 1935, attached to and forming a part of said objections and Exhibits A and B attached to said affidavit. (The brief attached to said objections is to be omitted.)

9. Memorandum granting rehearing, dated April 87 18, 1935.

10. Decree or Final Order based on said last mentioned memorandum.

11. Record of deposit on June 15, 1935, of \$50.00 in lieu of bond of appeal.

12. Assignment of Errors, filed June 15th, 1935.

13. Designation of Records for appeal.

14. Acknowledgment by respondent of service of notice of application for and allowance of appeal, and of receipt of copy of Assignment of Errors and copy of Designation of Record for Appeal.

JAMES E. TRASK,

FRANK HEALY,

Attorneys for Neal Crowley as Receiver of Cuyuna-Minneapolis Iron Company, Petitioner-Appellant.

Filed July 5, 1935.

* * * * *

The Clerk will please include in the transcript of record in the above-entitled cause, in addition to the papers designated by petitioner, the following parts of the record:

1. The order of June 13, 1933, substituting Harold L. Ickes, Secretary of the Interior, as respondent.

2. Respondent's motion of December 23, 1932, for leave to file an amended answer.

3. Respondent's amended answer filed pursuant to leave of court, *nunc pro tunc*, as February 21, 1933.

4. This additional designation of the record and the acceptance of service thereof.

NATHAN R. MARGOLD,
Solicitor, Department of the Interior.

WILLIAM H. ABBOTT,
Assistant Solicitor, Department of the Interior,

J. KENNARD CHEADLE,
Assistant Solicitor, Department of the Interior,
Attorneys for Harold L. Ickes, Secretary of the Interior.

89 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, Frank E. Cunningham, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 87, both inclusive, to be a true and correct transcript of the record, according to directions of counsel herein filed, copies of which are made part of this transcript, in cause No. 50946 in Equity, wherein Neal Crowley, as Receiver of the Cuyuna-Minneapolis Iron Company, a Corporation, is plaintiff, and Ray Lyman Wilbur, Secretary of the Interior, is respondent, as the same remains upon the files and of record in said Court.

In testimony whereof I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 22nd day of August, 1935.

[Seal of the Supreme Court of the District of Columbia.]

FRANK E. CUNNINGHAM,
Clerk,

By CHAS. B. COFLIN,
Assistant Clerk

[Endorsed on cover] District of Columbia
Court. No. 6537. Neal Crowley, as Receiver of the
Minneapolis Iron Company, a corporation, vs. Harold L. Ickes, Secretary of the Interior.
Court of Appeals for the District of Columbia Circuit.
24, 1935. Henry W. H.